

Reed R. Kathrein (139304)
Jeff D. Friedman (173886)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
reed@hbsslaw.com
jeff@hbsslaw.com

Attorneys for Plaintiffs Barton and Gentilcore

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LYNN BARTON, On Behalf of Herself and all)
Others Similarly Situated,)
Plaintiff.)
No. 08-cv-1341 JSW
No. 08-cv-1374 JSW
No. 08-cv-1928 MEJ
No. 08-cv-3391 JSW

v_a

FIDELITY NATIONAL FINANCIAL, INC.,
FIDELITY NATIONAL TITLE INSURANCE
COMPANY, TICOR TITLE INSURANCE
COMPANY, TICOR TITLE INSURANCE
COMPANY OF FLORIDA, CHICAGO TITLE
INSURANCE COMPANY, NATIONAL TITLE
INSURANCE OF NEW YORK, INC.,
SECURITY UNION TITLE INSURANCE
COMPANY, THE FIRST AMERICAN
CORPORATION, FIRST AMERICAN TITLE
INSURANCE COMPANY, UNITED
GENERAL TITLE INSURANCE COMPANY,
LANDAMERICA FINANCIAL GROUP, INC.,
COMMONWEALTH LAND TITLE
INSURANCE COMPANY, LAWYERS TITLE
INSURANCE CORPORATION,
TRANSNATION TITLE INSURANCE
COMPANY, STEWART TITLE GUARANTY
COMPANY and STEWART TITLE
INSURANCE COMPANY

Defendants.)

**DECLARATION OF REED R.
KATHREIN IN SUPPORT OF JOINT
MOTION TO CONSOLIDATE
RELATED ACTIONS FOR ALL
PURPOSES**

DATE: September 5, 2008
TIME: 9:00 a.m.
DEPT: Courtroom 2, 17th Floor

ACTION FILED: March 10, 2008

KATHREIN DECL. ISO UNOPPOSED MOTION TO
CONSOLIDATE CALIFORNIA ACTIONS - 08-cv-1341 JSW

1 I, Reed R. Kathrein, declare:

2 1. I am an attorney at the law firm of Hagens Berman Sobol Shapiro LLP, one of the
 3 counsel of record for Plaintiffs in the above action. I make this declaration in support of the Joint
 4 Motion to Consolidate Related Cases for All Purposes. I am familiar with the facts set forth herein
 5 and will testify to them if necessary.

6 2. Attached as Exhibits 1-9 are true and correct copies of the complaints filed in the
 7 following actions:

EX. NO.	ABBREVIATED CASE NAME	CASE NO.
1	<i>Barton v. Fidelity National Financial, Inc. et al.</i>	08-1341-JSW (N.D. Cal.)
2	<i>Gentilcore v. Fidelity National Financial, Inc. et al.</i>	08-1374-JSW (N.D. Cal.)
3	<i>Blackwell v. Fidelity National Financial, Inc. et al.</i>	08-1928-MEJ (N.D. Cal.)
4	<i>Romero v. Fidelity National Financial, Inc. et al.</i>	08-3391-JSW (N.D. Cal.)
5	<i>Martinez v. Fidelity National Financial, Inc. et al.</i>	08-0499-MJL (S.D. Cal.)
6	<i>Davis v. Fidelity National Financial, Inc. et al.</i>	08-1897-DSF (C.D. Cal.)
7	<i>Kothari v. Fidelity National Financial, Inc. et al.</i>	08-0440-DSF (C.D. Cal.)
8	<i>Magana v. Fidelity National Financial, Inc. et al.</i>	08-0591-DSF (C.D. Cal.)
9	<i>Moynahan v. Fidelity National Financial, Inc. et al.</i>	08-0620-AHS (C.D. Cal.)

21
 22 I declare under penalty of perjury under the laws of the United States that the foregoing is
 23 true and correct. Executed this 23rd day of July, 2008, at Berkeley, California.
 24

25 _____ /s/ Reed R. Kathrein _____
 26 REED R. KATHREIN
 27
 28

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Reed R. Kathrein
REED R. KATHREIN

CM/ECF ?

- [Civil](#)
- [Criminal](#)
- [Query](#)
- [Reports](#)
- [Utilities](#)
- [Search](#)
- [Logout](#)

Mailing Information for a Case 3:08-cv-01341-JSW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Steve W. Berman**
steve@hbsslaw.com,robert@hbsslaw.com,heatherw@hbsslaw.com
- **Jeff D Friedman**
jefff@hbsslaw.com,nancyq@hbsslaw.com,sf_filings@hbsslaw.com
- **Reed R. Kathrein**
reed@hbsslaw.com,nancyq@hbsslaw.com,sf_filings@hbsslaw.com
- **Margaret Anne Keane**
mkeane@dl.com
- **Thomas Eric Loeser**
toml@hbsslaw.com
- **Kris Hue Chau Man**
kman@dl.com,sholstrom@dl.com
- **Frank E. Merideth , Jr**
meridethf@gtlaw.com,beattyc@gtlaw.com
- **Anthony D. Shapiro**
tony@hbsslaw.com,george@hbsslaw.com,ronnie@hbsslaw.com
- **Alex C. Turan**
act@girardgibbs.com,ace@girardgibbs.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

Mailing Information for a Case 3:08-cv-01374-JSW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Jeff D Friedman**
jefff@hbsslaw.com,nancyq@hbsslaw.com,sf_filings@hbsslaw.com
- **Reed R. Kathrein**
reed@hbsslaw.com,nancyq@hbsslaw.com,sf_filings@hbsslaw.com
- **Margaret Anne Keane**
mkeane@dl.com
- **Kris Hue Chau Man**
kman@dl.com,sholstrom@dl.com
- **Frank E. Merideth , Jr**
meridethf@gtlaw.com,beattyc@gtlaw.com

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- (No manual recipients)

Mailing Information for a Case 3:08-cv-01928-MEJ

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Donald Chidi Amamgbo , Esq**
donald@amamgbolaw.com,ndudi@amamgbolaw.com
- **Frank E. Merideth , Jr**
meridethf@gtlaw.com,beattyc@gtlaw.com
- **Reginald Von Terrell**
reggiet2@aol.com

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- (No manual recipients)

Mailing Information for a Case 3:08-cv-03391-JSW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Daniel C. Girard**
dcg@girardgibbs.com,cma@girardgibbs.com
- **Elizabeth Cheryl Pritzker**
ecp@girardgibbs.com,act@girardgibbs.com,smq@girardgibbs.com,amv@girardgibbs.com,ale@girardgibbs.com,cme@girardgibbs.com
- **Aaron M. Sheanin**
ams@girardgibbs.com,amv@girardgibbs.com,ace@girardgibbs.com
- **Alex C. Turan**
act@girardgibbs.com,ace@girardgibbs.com

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- (No manual recipients)

EXHIBIT 1

1 Reed R. Kathrein (139304)
2 Jeff D. Friedman (173886)
HAGENS BERMAN SOBOL SHAPIRO LLP
3 715 Hearst Avenue, Suite 202
Berkeley, CA 94710
4 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
5 reed@hbsslaw.com
jefff@hbsslaw.com

E-filing

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNN BARTON, on behalf of herself and all
others similarly situated,

No

1341

EDL

Plaintiff.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

v₁

FIDELITY NATIONAL FINANCIAL, INC.,
FIDELITY NATIONAL TITLE INSURANCE
COMPANY, TICOR TITLE INSURANCE
COMPANY, TICOR TITLE INSURANCE
COMPANY OF FLORIDA, CHICAGO TITLE
INSURANCE COMPANY, NATIONAL TITLE
INSURANCE OF NEW YORK, INC.,
SECURITY UNION TITLE INSURANCE
COMPANY, THE FIRST AMERICAN
CORPORATION, FIRST AMERICAN TITLE
INSURANCE COMPANY, UNITED
GENERAL TITLE INSURANCE COMPANY,
LANDAMERICA FINANCIAL GROUP, INC.,
COMMONWEALTH LAND TITLE
INSURANCE COMPANY, LAWYERS TITLE
INSURANCE CORPORATION,
TRANSNATION TITLE INSURANCE
COMPANY, STEWART TITLE GUARANTY
COMPANY and STEWART TITLE
INSURANCE COMPANY

Defendants.

CLASS ACTION COMPLAINT

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1 Plaintiff, Lynn Barton, by her attorneys, on behalf of herself and all others similarly
2 situated, brings this action for treble damages and injunctive relief under the antitrust laws of the
3 United States and based on statutes of the State of California against the above named defendants,
4 demand a trial by jury, and complaining and alleging as follows:

5 **I. INTRODUCTION**

6 1. From the consumer's point of view, title insurance differs greatly from other, more
7 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies
8 protect consumer from an event that may occur in the future, title insurance offers protection from
9 events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from
11 problems that occurred in the past and may affect the title to the real estate that a consumer is
12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide. In
13 fact, almost all title policies are based on a single set of form policies published and maintained by
14 the national trade association, the American Land Title Association. Furthermore, the end goal of
15 an exhaustive title search by a title insurer is not to provide coverage for title defects that the search
16 uncovers, but rather to exclude coverage for any such defects and therefore, further reduce the real
17 value of the title policy which is written to cover only unknown defects in title at the time of
18 issuance. As a result, title insurance is a commodity product.

19 3. Even for the savviest of insurance consumers, the purchase of a title insurance
20 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of
21 paperwork and signings that culminate in the closing of a home purchase. Consumers who
22 normally shop around for their insurance and carefully compare prices, typically emerge from the
23 closing on their new home holding an insurance policy that they know virtually nothing about and
24 that in all likelihood, they will never need.

25 4. The title insurance market in California consists of a dozen carriers, ranging in size
26 from regional companies to national affiliates. However, the market is dominated by four groups
27 of affiliated companies which, combined, sell over 90 percent of the title insurance policies sold in

1 California and which own and control the title plants in many California counties that every title
2 insurer must rely on in order issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional
4 insurance carriers, choose not to market their products directly to the consumers who pay for them.
5 Instead, the title insurance industry operates on what is termed a "reverse competition" model.
6 Reverse competition means that title companies solicit business referrals from the other major
7 players in the home purchase scenario – real estate agents and agencies, banks, lenders, builders,
8 developers and others: middlemen or go-betweens. The title companies pay middlemen for these
9 referrals in the form of direct payments, advertising expenses, junkets, parties and other kick-backs
10 and inducements. In addition, middlemen such as Windermere, John L. Scott and Caldwell
11 Banker-Bain, who themselves control a significant portion of the real estate brokerage market, take
12 significant ownership stakes in local title agents and affiliates of the major title insurers and
13 thereby get a direct return in profit from the referral of title business to the title agent whom they
14 partly or wholly own.

15 6. Reverse competition, as the term suggests, isn't a model that benefits consumers
16 through market-driven forces. In fact, consumers are bypassed completely as title companies
17 spend nearly all of their marketing budgets "wining and dining" real estate agents, banks, lenders,
18 builders, developers and others in an effort to convince these middlemen to steer their home-
19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance
22 authority. The rates are not subject to any meaningful review or regulation. The companies agree
23 to fix the price of title insurance far in excess of the risk and loss experience associated with such
24 insurance. As a result of the joint agreement as to rates, competition is relegated to the middleman.
25 As a result of their joint rate setting and agreement, no company competes on price to the
26 consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies
28 agreed to not compete based on price to the consumer in other states, including California, where

regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive prices and to compete based on offering inducements to middlemen. In California, in three successive reports, the Office of the Insurance Commissioner ("OIC") has found an "astonishing number" of such inducements that are in violation of state law. However, the OIC does not actively oversee or regulate rates, and, in fact, does not by its own admission have the power to do so. The absence of regulation has allowed collusive behavior and excessive rates.

9. In addition to paying inducements and kick-backs, the title companies and their agents divide the market of real-estate middlemen through the use of Affiliated Business Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant ownership stakes in favored title insurance affiliates. The real estate brokers then reward their associates for using the preferred title insurance providers and lock-out independent title insurers.

10. In this action, plaintiff, on behalf of a Class of those purchasing title insurance in California, seek damages arising from defendants' violations of the Sherman Act as well as California statutory law.

II. JURISDICTION AND VENUE

11. This Complaint is filed and these proceedings are instituted under Sections 4 and 16 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain injunctive relief and to recover treble damages and the costs of suit, including a reasonable attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the Class which she represents by reason of defendants' and their co-conspirators' violations, as hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1).

12. Defendants transact business, maintain offices or are found within the Northern District of California. The interstate commerce described hereinafter is carried on, in part, within the Northern District of California and the conspiratorial acts herein alleged were carried on, in part, in the Northern District of California.

13. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of this Court is appropriate because a substantial part of the events or omissions which give rise to the

1 claim occurred in the county of San Francisco. Pursuant to Northern District of California, Local
2 Rule 3-2(d), assignment to either the San Francisco Division or the Oakland Division is proper.

3 III. PARTIES

4 A. Plaintiff

5 14. Plaintiff, Lynn Barton, is an individual residing in San Francisco County,
6 California. During the Class Period, plaintiff purchased title insurance directly from one or more
7 of the defendants herein and has been injured by reason of the antitrust violations alleged.

8 B. Defendants

9 15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware
10 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National
11 does business in California through one or more of its subsidiaries, including but not limited to,
12 defendants Fidelity National Title Insurance Company, Ticor Title Insurance Company, Ticor Title
13 Insurance Company of Florida, National Title Insurance of New York, Inc., Security Union Title
14 Insurance Company, and Chicago Title Insurance Company. Fidelity National is registered to do
15 business in California.

16 16. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California
17 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
18 FNTIC does business in California, is a licensed title insurance company in California and is
19 registered to do business in California.

20 17. Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation
21 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor does
22 business in California, is a licensed title insurance company in California and is registered to do
23 business in California.

24 18. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida
25 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
26 TTICF does business in California, is a licensed title insurance company in California and is
27 registered to do business in California.

1 19. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri
2 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
3 Chicago Title does business in California, is a licensed title insurance company in California and is
4 registered to do business in California.

5 20. Defendant National Title Insurance of New York, Inc. ("NTINY") is a New York
6 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
7 NTINY does business in California, is a licensed title insurance company in California and is
8 registered to do business in California.

9 21. Defendant Security Union Title Insurance Company ("SUTIC") is a California
10 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
11 SUTIC does business in California, is a licensed title insurance company in California and is
12 registered to do business in California.

13 22. The Fidelity family of title insurance companies (collectively, "Fidelity") – which
14 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and SUTIC,
15 and their affiliates – is engaged in selling title insurance to purchasers of commercial and
16 residential real estate throughout the United States, including California. Nationally, Fidelity
17 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly
18 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)
19 and since TIRSA's inception have charged title insurance rates in New York that TIRSA
20 collectively sets.

21 23. The Fidelity family of title insurance companies and their affiliates are wholly-
22 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,
23 Fidelity National is a provider of title insurance, specialty insurance, and claims management
24 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of title
25 insurance companies engaged in the conduct challenged herein with the approval and assent of
26 defendant Fidelity National.

1 24. Defendant The First American Corporation (“First American”) is a California
2 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. First
3 American does business in California through one or more of its subsidiaries, including but not
4 limited to, defendants First American Title Insurance Company and United General Title Insurance
5 Company.

6 25. Defendant First American Title Insurance Company (“FATIC”) is a California
7 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC does
8 business in California, is a licensed title insurance company in California and is registered to do
9 business in California.

10 26. Defendant United General Title Insurance Company (“UGTIC”) is a Colorado
11 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does
12 business in California, is a licensed title insurance company in California and is registered to do
13 business in California.

14 27. The First American family of title insurance companies (collectively, “First
15 American”) – which includes defendants First American, FATIC and UGTIC, and their affiliates –
16 is engaged in selling title insurance to purchasers of commercial and residential real estate
17 throughout the United States, including California. Nationally, First American accounts for
18 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion. First
19 American Title was a founding member of TIRSA and since TIRSA’s inception has charged title
20 insurance rates in New York that TIRSA collectively sets.

21 28. The First American family of title insurance companies and their affiliates are
22 wholly-owned and controlled by defendant The First American Corporation. Through its
23 subsidiaries, First American is a provider of title insurance, business information, and related
24 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First
25

1 American family of title insurance companies and their affiliates engaged in the conduct
2 challenged herein with the approval and assent of defendant First American.

3 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia
4 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does
5 business in California through one or more of its subsidiaries, including but not limited to,
6 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation
7 and Transnation Title Insurance Company.

8 30. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a
9 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,
10 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in
11 California and is registered to do business in California.

12 31. Defendant Lawyers Title Insurance Corporation ("LTIC") is a Nebraska corporation
13 with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060. LTIC does
14 business in California, is a licensed title insurance company in California and is registered to do
15 business in California.

16 32. Defendant Transnation Title Insurance Company ("TNTIC") is a Nebraska
17 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.
18 TNTIC does business in California, is a licensed title insurance company in California and is
19 registered to do business in California.

20 33. The LandAmerica family of title insurance companies (collectively,
21 "LandAmerica") – which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their
22 affiliates – is engaged in selling title insurance to purchasers of commercial and residential real
23 estate throughout the United States, including California. Nationally, LandAmerica accounts for
24 approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion.
25 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA's
26 inception have charged title insurance rates in New York that TIRSA collectively sets.

27 34. The LandAmerica family of title insurance companies and their affiliates are
28 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its

1 subsidiaries, LandAmerica is a provider of title insurance and other products and services that
2 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.
3 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title insurance
4 companies and their affiliates engaged in the conduct challenged herein with the approval of
5 defendant LandAmerica.

6 35. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation
7 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in
8 California, is a licensed title insurance company in California and is registered to do business in
9 California.

10 36. Defendant Stewart Title Insurance Company ("STIC") is a New York corporation
11 with its principle place of business at 300 E. 42nd St., Floor 10, New York, NY 10017. STIC does
12 business in California, is a licensed title insurance company in California and is registered to do
13 business in California.

14 37. The Stewart family of title insurance companies (collectively, "Stewart") – which
15 includes defendants STGC and STIC, and its affiliates – is engaged in selling title insurance to
16 purchasers of commercial and residential real estate throughout the United States and California.
17 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006
18 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's
19 inception has charged title insurance rates in New York that TIRSA collectively sets.

20 38. Together, defendants account for more than 85 percent of the title premiums
21 consumers pay in California. Nationally, they account for more than 85 percent of title premiums,
22 which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages period,
23 defendants charged California consumers in California virtually identical title insurance rates.

24 IV. OTHER ENTITIES

25 39. TIRSA is a voluntary association of title insurers licensed as a rate service
26 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains its
27 offices in New York City, which until recently were located at the same New York address of
28 Fidelity Title.

1 40. TIRSA annually compiles from its members statistical data relating to their title
2 insurance premiums, losses and expenses and submits this information in aggregate form to the
3 New York Insurance Department. TIRSA also prepares and submits the New York Title Insurance
4 Rate Manual which sets forth title rates to be charged and rules to be followed by TIRSA's
5 members. The Insurance Department has never objected to any of the rates TIRSA has collectively
6 set. Similarly, the California OIC has not actually held a public hearing or conducted any other
7 review or regulation of the title insurance rates in California for thirty years.

8 41. TIRSA's membership is comprised of defendant insurers and all other title insurers
9 that are licensed to issue policies in New York. Currently, Fidelity, First American, LandAmerica,
10 and Stewart collectively represent 14 of TIRSA's 22 members. As such, they comprise a majority
11 voting block which, according to TIRSA's by-laws, allows them to control the operations of
12 TIRSA and, in particular, TIRSA's collective rate setting activity.

13 42. Various other persons, firms and corporations not made defendants herein have
14 participated as co-conspirators with the defendants in the violations alleged herein and have
15 performed acts and made statements in furtherance thereof.

V. CLASS ACTION ALLEGATIONS

17 43. Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the
18 Federal Rules of Civil Procedure, on behalf of herself and a Class consisting of all persons
19 excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who
20 purchased directly, from one or more of the defendants and/or their co-conspirators title insurance
21 for residential and commercial property in California during the four year period preceding this
22 lawsuit and who have sustained damages as a result of the conspiracy herein alleged. The number
23 of potential Class members is so numerous that joinder is impracticable.

24 44. Plaintiff, as representative of the Class, will fairly and adequately protect the interest
25 of the Class members. The interests of plaintiff are coincident with, and not antagonistic to, those
26 of the Class members.

27 45. Except as to the amount of damages each member of the Class has by itself
28 sustained, all other questions of fact and law are common to the Class, including but not limited to,

1 the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act
2 (15 U.S.C. § 1) and the effects of such violation.

3 46. Plaintiff, along with all other members of the Rule (b)(3) Class, were injured as a
4 result of paying supracompetitive prices for title insurance in California. These supracompetitive
5 prices were achieved as a result of defendants' illegal price-fixing activities and market allocation
6 and division.

7 47. Members of the Class include hundreds of thousands, if not millions, of consumers.
8 They are so numerous that their joinder would be impracticable.

9 48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal
10 Rules of Civil Procedure, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule
11 (b)(2) Class includes all members of the (b)(3) Class, and all consumers who are threatened with
12 injury by the anticompetitive conduct detailed herein.

13 49. Defendants have acted, continued to act, refused to act and continued to refuse to act
14 on grounds generally applicable to the Rule (b)(2) Class, thereby making appropriate final
15 injunctive relief with respect to the Rule (b)(2) Class as a whole.

16 50. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions, of
17 consumers. They are so numerous that their joinder would be impracticable.

18 51. Common questions of law and fact exist with respect to all Class members and
19 predominate over any questions solely affecting individual Class members. Among the questions
20 of law or fact common to the class are the following:

- 21 • Whether defendants have engaged in the alleged illegal price-fixing activity
and market allocation and division.
- 22 • The duration and scope of defendants' alleged illegal price-fixing and market
allocation and division activity.
- 23 • Whether defendants' alleged illegal price-fixing and market allocation and
division has caused higher prices to plaintiffs and other purchasers of title
insurance in California.
- 24 • Whether the Insurance Commissioner has actively supervised defendants'
price fixing and market allocation and division.

1 52. Plaintiff does not have any conflict of interest with other Class members. Plaintiff's
2 claims are typical of the claims of the Class and they will fairly and adequately reflect the interests
3 of the Class. Counsel competent and experienced in federal class action and federal antitrust
4 litigation has been retained to represent the Class.

5 53. This action is superior to any other method for the fair and efficient adjudication of
6 this legal dispute since joinder of all members is not only impracticable, but impossible. The
7 damages suffered by certain members of the Class are small in relation to the expense and burden
8 of individual litigation and therefore it is highly impractical for such Class members to seek redress
9 for damages resulting from defendants' anticompetitive conduct.

10 54. There will be no extraordinary difficulty in the management of the Class action.

11 **VI. TRADE AND COMMERCE**

12 55. During all or part of the period in suit, defendants and their co-conspirators were
13 sellers of title insurance in California.

14 56. During the period in suit, the defendants sold substantial quantities of title insurance
15 in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in the United
16 States paid \$17 billion for residential title insurance policies.

17 57. During the period in suit, Class members from locations outside California
18 purchased commercial or residential property and title insurance within California.

19 58. During the period in suit, the defendants were the major sellers of title insurance in
20 the United States and California. Defendants controlled in excess of 85 percent of the market for
21 title insurance in the United States and California.

22 59. The activities of the defendants and their co-conspirators, as described herein, were
23 within the flow of interstate commerce and substantially affected interstate commerce.

24 **VII. FACTUAL ALLEGATIONS**

25 A. The Nature of Title Insurance

26 60. Title insurance is one of most costly items associated with the closing of a real
27 estate transaction. In California, rates for title insurance are based on a percentage of the total
28 value of the property being insured. For residential properties, this price ranged in 2005 from

1 about \$1,010 (for a \$250,000.00) property to \$1,490 (for a \$500,000 property). For more
2 expensive homes and commercial properties, these prices are significantly higher. This amount
3 spent on title insurance has risen dramatically over the past decade.

4 61. Title insurance serves an important purpose. It protects the purchaser of a property
5 from any unidentified defects in the title that would in any way interfere with the full and complete
6 ownership and use of the property with the ultimate right to resell the property. Title insurance is
7 required by lenders in most residential and commercial real estate transactions.

8 62. Consumers exercise little discretion in choosing the title insurer from which they
9 purchase the insurance. That decision is typically made for them by their lawyer, mortgage broker,
10 lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not challenged.
11 Most consumers do not even become aware of the price they will pay and to which insurer they
12 will pay it until the actual closing of the real estate transaction. By then it's too late, consumers
13 can't attempt to negotiate a better title insurance price or alternate provider for fear of delaying or
14 derailing the entire transaction. There is no shopping around. There is no negotiation of price.

15 63. This dynamic basically removes the sale of title insurance from the normal
16 competitive process. Unlike the regular forces of supply and demand that keep most industries and
17 their pricing in check, the title insurance industry is not subject to any real competitive constraints.
18 The purchasers of the insurance, in most instances, are not the ones making the purchasing
19 decisions. And, they are certainly in no position to question the price.

20 64. The most effective but illegal way for a particular title insurer to get business is to
21 encourage those making the purchasing decisions – the real-estate middlemen – to steer business to
22 that insurer. The best way to so motivate the middlemen is not through lower prices (that they are
23 not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals, business
24 services and other financial enticements. Therefore, it is through higher pricing (which allows for
25 generous inducements and kick-backs), not lower pricing, that provides the best way for title
26 insurers to compete and increase their business.

1 **B. Price-Fixing in the Large Markets**

2 65. New York is one of several states in which the leading title insurers collectively fix
3 their prices through a rate-setting organization like TIRSA. There are two principal cost
4 components that go into TIRSA's calculation. One comprises the risk associated with issuing the
5 title policy. The other comprises the "agency commissions" paid to title agents.

6 66. The risk component covers the risk the title insurer bears for any undiscovered
7 defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of
8 loss to the insurer. That is because title insurance protects against unknown *prior* events that cause
9 defects in title. With a proper search and examination of prior ownership records, any such defects
10 can and almost always are readily identified and excluded from the policy's coverage.
11 Consequently, the average claim payout on a title insurance policy in the United States amounts to
12 only about 5 percent of the total premium collected. This is very different from property coverage
13 (such as auto and home insurance) – which protects against *future* occurrences over which the
14 insurer has little to no control – where the average claim payout amounts to about 80 percent of the
15 total premium.

16 67. The "agency commissions" component of the title insurance rate covers payments
17 made to title agents. Defendants have an ownership or management stake in many of the title
18 agencies to which these payments are made. A small portion of these payments is for the search
19 and exam of prior ownership records of the property being purchased to identify any liens,
20 encumbrances, burdens, exclusions, or other defects in the title. The search and exam function
21 does not involve the spreading or underwriting of risk, and title insurers typically outsource this
22 task to title agents.

23 68. The remainder, and by far the bulk, of the agency commissions are comprised of
24 costs unrelated to the issuance of title insurance. These costs include kickbacks and other financial
25 inducements title insurers provide to title agents and indirectly (through title agents) to the lawyers,
26 brokers, and lenders who, in reality, are the ones deciding which title insurer to use. These
27 payments have nothing to do with the issuance of title insurance and are made by title insurers
28 merely to inflate their revenues and steer business their way.

1 69. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title
2 insurance premium is based on the so-called "costs" associated with the payment of agency
3 commissions. Only 15 percent is based on costs associated with the risk of loss.

4 70. TIRSA publishes its final calculated title rates in the New York Title Insurance Rate
5 Manual. These rates are tied to the value of the property being insured. This is so despite the fact
6 that the costs associated with agency commissions are entirely unrelated to the value of the
7 property. Indeed, agency kickbacks and enticements have little to do with producing a particular
8 title policy and provide no value – proportional to property value or otherwise – to the consumer.
9 Even search and exam costs are unrelated to property value. They instead depend on the age of the
10 property, the complexity of the ownership history, and the accessibility of prior ownership records.

11 71. There are other states in which the defendants overly meet and agree to fix the rates
12 for title insurance as part of a formal collective rate setting process.

13 **C. TIRSA's Formation**

14 72. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served as
15 the title insurance rate-setting body in New York. NYBTU, along with the title insurance rate
16 setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal
17 Trade Commission("FTC") challenge to the collective rate setting activity of many of these
18 associations. The FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992),
19 where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate setting
20 activity of these rating bureaus must be actively supervised by the state.

21 73. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC
22 contended that the respective state insurance departments merely rubber-stamped this portion of the
23 collectively fixed rates without any independent review or analysis of their reasonableness or cost
24 justification. The Supreme Court agreed with the FTC that this kind of limited state oversight was
25 not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance department has to
26 "exercise[]sufficient independent judgment and control so that the details of the rates or prices have
27 been established as a product of deliberate state intervention, not simply by agreement among
28 private parties." *Ticor*, 504 U.S. at 634-35.

1 74. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand in
2 *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the
3 collective rate-setting of certain state rating bureaus was improper because it was not actively
4 supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed us
5 that a state's rubber stamp is not enough. Active supervision requires the state regulatory
6 authorities' independent review and approval." *Id.* at 1139.

7 75. Defendants formulated TIRSA's first rate manual and procedure soon after the
8 Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme to
9 get around the rigors of state oversight required by *Ticor*. They have done so by calculating a
10 single rate that comprises both risk and agency commission costs and by outsourcing to title agents
11 the agency commission costs. In this way, defendants avoid providing the Insurance Department
12 with any detailed breakout or backup for the bulk of the costs that make up their collectively fixed
13 rates.

14 76. TIRSA merely submits an aggregated figure that is supposed to represent the total
15 agency commission costs. Embedded within this figure is the vast quantity of dollars that are
16 funneled to and through the title agencies as kickbacks, financial inducements and other costs
17 unrelated to the issuance of title insurance. Defendants' design in all of this has been to effective
18 "hide" the cost basis for their artificially high and collectively fixed title insurance premiums from
19 the regulatory scrutiny that *Ticor* demands.

20 **D. Lack of Regulatory Supervision and Authority in New York and Other States
21 Including California**

22 77. There is no provision under the New York Insurance Law for TIRSA to include in
23 its collectively fixed rates kickbacks and other agency commission payments unrelated to the
24 issuance of title insurance. Indeed, the New York Insurance Department has openly acknowledged
25 that it lacks the authority to review any agency commission payments. It has likewise recognized
26 that defendants' outsourcing of agency commission costs has prevented it from performing a
27 meaningful review of TIRSA's calculated rates. This was made clear at a November 2006 public
28 hearing the New York Insurance Department held – the first in 15 years – where it questioned

1 TIRSA and its members on TIRSA's failure to provide the Insurance Department with any backup
2 or detail for agency commissions.

3 78. At the hearing, the Insurance Department conceded that it could not properly
4 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost
5 information on agency commissions that TIRSA does not provide.

6 79. The Insurance Department's recognition that it is not properly supervising TIRSA's
7 rate-setting activity is consistent with the April 2007 findings of the U.S. Government
8 Accountability Office ("GAO") that the title insurance industry is in need of greater state
9 regulation. The GAO studied the industry conditions of several states, including New York, and
10 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs*
11 *and operations*, needed to analyze premium prices and underlying costs." (Emphasis added.)

12 80. Unchecked by regulatory review and insulated from competition, defendants have
13 thus been able to collectively fix title insurance rates at supra competitive levels and earn profits
14 that vastly exceed those contemplated by the Insurance Department or that would have resulted in a
15 free and open competitive market.

16 81. At the time of TIRSA's formation, the Insurance Department established 5 percent
17 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance
18 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its
19 revenue and cost information, to ensure that this 5 percent profit level is maintained and based on a
20 reasonable premium. However, without the authority or ability to scrutinize agency commission
21 costs, the Insurance Department has been unable to perform this function. As a result, defendants
22 (through TIRSA) have been able to set artificially high title premiums and secure title profits far in
23 excess of the 5 percent threshold.

24 82. Through an independent investigation conducted over the past several years, the
25 New York State Attorney General found that for every dollar of insurance premium defendants
26 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is paid
27 out in claims. And, of the roughly 85 cents that supposedly covers agency commissions, only
28 between 8 and 11 cents goes to costs actually incurred by title agents in producing the title policy.

1 These numbers show that title insurers' collectively fixed rates have resulted in profits that
 2 untethered to and vastly exceed the costs of producing such policies.

3 83. The New York Attorney General's investigation further revealed that what was
 4 largely driving these numbers were the kickbacks and other financial inducements defendants were
 5 funneling to and through title agents to secure more business. As reported at the New York
 6 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it spent
 7 more than \$1 million of these so-called "agency commissions" on items identified as "Christmas",
 8 "automobile expenses", "political contributions", "promotional expenses", and "travel and
 9 entertainment". These expenses are not even remotely related to the issuance of title insurance.

10 84. The Washington State Insurance Commissioner's October 2006 report found
 11 strikingly similarly abuses in Washington. Violations were pervasive and the Commissioner
 12 concluded that consumers were paying too much as a result.

13 85. All of this "excess money" paid to title agents not only works to steer business to
 14 defendants. It also serves to boost defendants' own profits through the inflated revenues they
 15 obtain to cover these agency payments and through their ownership or management stake in many
 16 of these agencies.

17 86. Defendants are competitors in the sale of title insurance to consumers throughout
 18 the United States. These title insurers have agreed and engaged in concerted efforts to
 19 (i) collectively set and charge uniform and supraregulatory rates for title insurance, (ii) include in
 20 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,
 21 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these supposed
 22 "costs" from regulatory scrutiny by funneling them to and through title agents over which the
 23 government agencies have no ability or authority to regulate.

24 87. The GAO in its 2007 report entitled "Actions Needed to Improve Oversight of the
 25 Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of
 26 competition and questions about the reasonableness of prices including:

- 1 • Consumers find it difficult to shop for title insurance,
2 therefore, they put little pressure on insurers and agents to
3 compete based on price;
- 4 • Title agents do not market to consumers, who pay for title
5 insurance, but to those in the position to refer consumers to
6 particular title agents, thus creating potential conflicts of
7 interest;
- 8 • A number of recent investigations by HUD and state
9 regulatory officials have identified instances of alleged illegal
10 activities with the title industry that appear to reduce price
11 competition and could indicate excessive prices;
- 12 • As property values or loan amounts increase, prices paid for
13 title insurance by consumers appear to increase faster than
14 insurers' and agents' costs; and
- 15 • In states where agents' search and examination services are
16 not included in the premium paid by consumers, it is not clear
17 that additional amounts paid to title agents are fully supported
18 by underlying costs.

19 88. The GAO visited several states, including California, and found a lack of regulatory
20 oversight:

21 In the states we visited, we found that regulators did not assess title
22 agents' costs to determine whether they were in line with premium
23 rates; had made only limited efforts to oversee title agents (including
24 ABAs involving insurers and agents); and, until recently, had taken
25 few actions against alleged violations of antikickback laws. In part,
26 this situation has resulted from a lack of resources and limited
27 coordination among different regulators within states. On the federal
28 level, authority for alleged violations of section 8 of RESPA,
including those involving increasingly complex ABAs, is limited to
seeking injunctive relief. Some state regulators expressed frustration
with HUD's level of responsiveness to their requests for help with
enforcement, and some industry officials said that RESPA rules
regarding ABAs and referral fees need to be clarified. Industry and
government stakeholders have proposed several regulatory changes,
including RESPA reform, strengthened regulation of agents, a
competitor right of action with no monetary penalty, and alternative
title insurance models. [Id. at 41, footnotes omitted.]

1 **E. Competition Based on Kickbacks and Inducements But Not Rates**

2 89. Having agreed to fix or stabilize prices in New York and other states where they
3 overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

4 90. In other words, as a direct result of these meetings where rates were agreed to, these
5 same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well.
6 To compete on rates in other states could and would imperil their ability to maintain the agreed rate
7 in states like New York.

8 91. As is the case in New York, a lack of regulatory authority over rates created an
9 environment in which a conspiracy can and did succeed. No agency was examining why all the
10 rates were virtually identical, and no agency was examining whether the costs associated with these
11 premiums were reasonable. This is an environment which is conducive to price fixing.

12 92. In California, there is a lack of regulatory authority and oversight over title
13 insurance companies. The rates in California are not set as part of a deliberate state intervention
14 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue in
15 this case went into effect without review.

16 **F. Other Indicators of a Lack of Competition and Conditions Conducive to Collusive
17 Rate Setting**

18 93. In addition to the uniformity of rates, other facts suggest that it is more plausible
19 than not that rates have been set based on an agreement to fix prices.

20 94. In theory, the chain of title should be documented back to its historic grant of
21 ownership centuries in the past. Fear about a possible title defect in the distant past is widely used
22 as a justification by title agencies when convincing property buyers to purchase an owner policy in
23 addition to the lender policy, which is mandatory to secure a mortgage. The title agency, however,
24 saves much time and money when the search is limited to one or two transactions. They rely on
25 the insurance policy to cover the remote chance of missing an earlier but still-valid claim. If such a
26 claim is asserted and survives the scrutiny of the title insurance company's legal department, the
27 expected cost of compensation is likely to be less than the sum of added overhead costs of
28 routinely tracing back every chain of title to the earliest registered owner in the distant past.

1 95. Title insurance industry officials tend to justify the large proportion of the premium
2 retained by the title abstract and settlement agency (from 60 to more than 90 percent) by the
3 alleged high cost of title searching back into the distant past. In fact, a high proportion of
4 noncommercial properties are searched only through the most recent transaction. No information
5 is available as to what proportion of claims originate in the distant past. The industry has never
6 published pertinent statistics. It would have a marketing incentive to publish these statistics if the
7 risk were significant; that it has not published these statistics indicates that the risk probably is only
8 slightly greater than zero.

9 96. Many U.S. homes are being resold three or four times in twenty-five years. At each
10 of these occasions, an abstract of title will be prepared on the basis of a more or less thorough
11 review of the available title records, inheritance records, family records and records of past or
12 current liens against a property. It is reasonable, therefore, to suspect that the risk of a title defect
13 will decrease every time a property is sold.

14 97. Title searches have become less labor intensive, especially in large urban counties
15 and cities. More and more of the information is available online. The statistical likelihood that a
16 title default would be overlooked is a closely held industry secret, but it appears to be so small that
17 many transactions are now insured on the basis of a search of the last owner's title history or a
18 search into transactions that occurred during the last twenty-five to thirty-five years. The evidence
19 is strong that the title insurance industry has achieved a remarkably high level of loss minimization.

20 98. Thus the costs of production have decreased as has the risk of loss yet none of these
21 factors has resulted in price competition at the consumer level.

22 99. There is a remarkable absence of rate changes by title insurers over the past five
23 years, despite declining costs of production, increased number of transactions and increased
24 revenue per transaction. During a period when costs per unit of production declined significantly,
25 underwritten title companies and title insurers maintained excessive rates. The prices charged by
26 title insurers and underwritten title companies were not and are not responsive to the changing
27 costs of production or increasing revenue per transaction at a given set of rates. Again, this is
28 indicia of an agreement not to compete based on price.

1 100. As noted, the title companies engage in illegal rebates and kickbacks where the title
2 insurer or the underwritten title company provides money, free services or other things of value to
3 a real estate agent, a lender or homebuilder in exchange for business referrals. These illegal rebates
4 and kickbacks – a consequence of reverse competition – show that title insurance rates are supra
5 competitive and that some portion of the overcharge is passed from the underwritten title company
6 or title insurer to the referrer of business.

7 101. A lack of competition and the ability to control prices is enhanced by the fact that
8 there were few title insurer entrants over the period from 1995 through 2005 and the number of
9 title insurer groups declined as title insurers acquired other title insurers. There were few
10 underwritten title company entrants over the 2000 to 2005 period and new entrants were controlled
11 business arrangements whose addition to the market did not result in greater price competition.

12 102. Access to title plants can be a barrier to entry, but a large barrier to entry exists due
13 to the established relationships between the entities that can steer the consumer's title and escrow
14 business and the entities who sell title insurance and escrow services.

15 103. The title insurance market is highly concentrated – a few title insurers account for
16 the vast majority of title insurance sales – at both the statewide level and at the county level in
17 California. For example, three title insurer groups account for 77.4% of the market at a statewide
18 level. At the county level, each individual market was highly concentrated. The GAO found that
19 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the
20 ability of companies to fix prices

21 104. The agreement not to compete based on price is also evidenced by the fact that no
22 company has marketed its services to consumers, the ultimate purchasers of the product. This is in
23 marked contrast to real insurance, for example, car insurance, where the companies compete
24 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor," or
25 Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

VIII. CLAIMS FOR RELIEF

COUNT II

Violation of the Sherman Act

105. Plaintiff incorporates by reference the preceding allegations.

106. Beginning at least as early as February 2004, and continuing thereafter to the present, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

107. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which have been:

(a) to fix, raise, maintain and stabilize the price of title insurance throughout California;

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and

(c) to allocate and divide the market for title insurance in California.

108. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California and is a *per se* violation of Section I of the Sherman Act.

109. Defendants' price-fixing, market allocation and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

110. Through their collective price-fixing, market allocation and division and manipulation of the regulatory process, defendants have harmed competition by charging consumers supra competitive prices for title insurance in California, evidenced in part by the fact that the prices are uniformly higher than compared with the cost of providing the insurance.

111. The aforesaid combination and conspiracy has had the following effects among others:

(a) price competition in the sale of title insurance has been suppressed, restrained and eliminated;

(b) prices for title insurance have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and

(c) purchasers of title insurance have been deprived of the benefit of free and open competition.

112. During the period of the antitrust violations by defendants and their co-conspirators, plaintiff and each member of the Class she represents, has purchased title insurance and, by reason of the antitrust violations herein alleged, paid more for such that it would have paid in the absence of said antitrust violations. As a result, plaintiff and each member of the Class she represents, has been injured and damaged in an amount presently undetermined.

COUNT II

Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.*

113. Plaintiff incorporates by reference the preceding allegations.

114. Defendants conduct as set forth above is in violation of the Cartwright Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

115. As a direct result of defendants' unlawful acts plaintiffs have paid artificially inflated prices for title insurance and have suffered injury to their business and property.

COUNT III

(California's Business & Professions Code §§ 17200, *et seq.*)

116. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of herself and the members of the Class.

117. Defendants' statements and representations constitute unfair, unlawful and deceptive trade practices in violation of the UCL.

118. All of the wrongful conduct alleged herein occurs and continues to occur in the conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is repeated in the State of California on hundreds, if not thousands, of occasions daily.

119. Plaintiff has suffered injury in fact and has lost money or property as a result of defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance than she would or should have absent the conduct complained of.

120. Plaintiff requests that this Court enter such orders or judgment as may be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to restore to any person in interest any money which may have been acquired by means of such unfair competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

COUNT IV

UNJUST ENRICHMENT

121. Plaintiff incorporates by reference the preceding allegations.

122. This Cause of Action is pled in the alternative to all claims and/or causes of action at law.

123. Defendant has received a benefit from plaintiff and the Class members in the form of the prices plaintiff and the Class members paid for defendants' title insurance.

124. Defendants are aware of their receipt of the above-described benefit.

125. Defendants received the above-described benefit to the detriment of plaintiff and each of the other members of the Class.

126. Defendants continue to retain the above-described benefit to the detriment of plaintiff and the Class members.

127. As a result of defendants' unjust enrichment, plaintiff and the Class members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution

1 of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or
 2 wrongful conduct alleged above.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff demands:

5 A. That the alleged combination and conspiracy among the defendants and their
 6 co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of
 7 Section 1 of the Sherman Act;

8 B. That the Court declare that the premiums charged are excessive under state law and
 9 order damages;

10 C. That judgment be entered against defendants, jointly and severally, and in favor of
 11 plaintiff, and each member of the Class it represents, for threefold the damages determined to have
 12 been sustained by plaintiff, and each member of the Class it represents, together with the cost of
 13 suit, including a reasonable attorneys' fee;

14 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their
 15 respective officers, directors, agents and employees, and all other persons acting or claiming to act
 16 on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any
 17 manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination,
 18 conspiracy, agreement, understanding or concert of action, adopting or following any practice,
 19 plan, program, or design having a similar purpose or effect in restraining competition; and

20 E. Such other and further relief as may appear necessary and appropriate.

21 **JURY TRIAL DEMANDED**

22 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged herein.

23 DATED: March 10, 2008.

24 HAGENS BERMAN SOBOL SHAPIRO LLP

25 By _____
 26 _____
 27 JEFF D. FRIEDMAN (173886)
 28

1 Reed R. Kathrein (139304)
2 715 Hearst Avenue, Suite 202
3 Berkeley, CA 94710
4 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
jefff@hbsslaw.com
reed@hbsslaw.com

5 Steve W. Berman
6 Anthony D. Shapiro
7 Thomas E. Loeser (202724)
HAGENS BERMAN SOBOL SHAPIRO LLP
8 1301 Fifth Avenue, Suite 2900
Seattle, California 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com
tony@hbsslaw.com
toml@hbsslaw.com

12 Attorneys for Plaintiff

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EXHIBIT 2

E-filing

1 Reed R. Kathrein (139304)
2 Jeff D. Friedman (173886)
3 HAGENS BERMAN SOBOL SHAPIRO LLP
4 715 Hearst Avenue, Suite 202
5 Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
reed@hbsslaw.com
jefff@hbsslaw.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LISA GENTILCORE, on behalf of herself and
all others similarly situated,

CLASS ACTION COMPLAINT

v

FIDELITY NATIONAL FINANCIAL, INC.,
FIDELITY NATIONAL TITLE INSURANCE
COMPANY, TICOR TITLE INSURANCE
COMPANY, TICOR TITLE INSURANCE
COMPANY OF FLORIDA, CHICAGO TITLE
INSURANCE COMPANY, NATIONAL TITLE
INSURANCE OF NEW YORK, INC.,
SECURITY UNION TITLE INSURANCE
COMPANY, THE FIRST AMERICAN
CORPORATION, FIRST AMERICAN TITLE
INSURANCE COMPANY, UNITED
GENERAL TITLE INSURANCE COMPANY,
LANDAMERICA FINANCIAL GROUP, INC.,
COMMONWEALTH LAND TITLE
INSURANCE COMPANY, LAWYERS TITLE
INSURANCE CORPORATION,
TRANSNATION TITLE INSURANCE
COMPANY, STEWART TITLE GUARANTY
COMPANY and STEWART TITLE
INSURANCE COMPANY

Defendants.

CLASS ACTION COMPLAINT

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1 Plaintiff, Lisa Gentilcore, by her attorneys, on behalf of herself and all others similarly
2 situated, brings this action for treble damages and injunctive relief under the antitrust laws of the
3 United States and based on statutes of the State of California against the above named defendants,
4 demand a trial by jury, and complaining and alleging as follows:

5 **I. INTRODUCTION**

6 1. From the consumer's point of view, title insurance differs greatly from other, more
7 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies
8 protect consumer from an event that may occur in the future, title insurance offers protection from
9 events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from
11 problems that occurred in the past and may affect the title to the real estate that a consumer is
12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide. In
13 fact, almost all title policies are based on a single set of form policies published and maintained by
14 the national trade association, the American Land Title Association. Furthermore, the end goal of
15 an exhaustive title search by a title insurer is not to provide coverage for title defects that the search
16 uncovers, but rather to exclude coverage for any such defects and therefore, further reduce the real
17 value of the title policy which is written to cover only unknown defects in title at the time of
18 issuance. As a result, title insurance is a commodity product.

19 3. Even for the savviest of insurance consumers, the purchase of a title insurance
20 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of
21 paperwork and signings that culminate in the closing of a home purchase. Consumers who
22 normally shop around for their insurance and carefully compare prices, typically emerge from the
23 closing on their new home holding an insurance policy that they know virtually nothing about and
24 that in all likelihood, they will never need.

25 4. The title insurance market in California consists of a dozen carriers, ranging in size
26 from regional companies to national affiliates. However, the market is dominated by four groups
27 of affiliated companies which, combined, sell over 90 percent of the title insurance policies sold in

1 California and which own and control the title plants in many California counties that every title
 2 insurer must rely on in order issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional
 4 insurance carriers, choose not to market their products directly to the consumers who pay for them.
 5 Instead, the title insurance industry operates on what is termed a “reverse competition” model.
 6 Reverse competition means that title companies solicit business referrals from the other major
 7 players in the home purchase scenario – real estate agents and agencies, banks, lenders, builders,
 8 developers and others: middlemen or go-betweens. The title companies pay middlemen for these
 9 referrals in the form of direct payments, advertising expenses, junkets, parties and other kick-backs
 10 and inducements. In addition, middlemen such as Windermere, John L. Scott and Caldwell
 11 Banker-Bain, who themselves control a significant portion of the real estate brokerage market, take
 12 significant ownership stakes in local title agents and affiliates of the major title insurers and
 13 thereby get a direct return in profit from the referral of title business to the title agent whom they
 14 partly or wholly own.

15 6. Reverse competition, as the term suggests, isn’t a model that benefits consumers
 16 through market-driven forces. In fact, consumers are bypassed completely as title companies
 17 spend nearly all of their marketing budgets “wining and dining” real estate agents, banks, lenders,
 18 builders, developers and others in an effort to convince these middlemen to steer their home-
 19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers
 21 collectively meet, and jointly set rates and file these rates with the applicable state insurance
 22 authority. The rates are not subject to any meaningful review or regulation. The companies agree
 23 to fix the price of title insurance far in excess of the risk and loss experience associated with such
 24 insurance. As a result of the joint agreement as to rates, competition is relegated to the middleman.
 25 As a result of their joint rate setting and agreement, no company competes on price to the
 26 consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies
 28 agreed to not compete based on price to the consumer in other states, including California, where

1 regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive
 2 prices and to compete based on offering inducements to middlemen. In California, in three
 3 successive reports, the Office of the Insurance Commissioner (“OIC”) has found an “astonishing
 4 number” of such inducements that are in violation of state law. However, the OIC does not
 5 actively oversee or regulate rates, and, in fact, does not by its own admission have the power to do
 6 so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their
 8 agents divide the market of real-estate middlemen through the use of Affiliated Business
 9 Arrangements (“ABAs”), wherein the dominant real estate brokers purchase significant ownership
 10 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for
 11 using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a Class of those purchasing title insurance in
 13 California, seek damages arising from defendants’ violations of the Sherman Act as well as
 14 California statutory law.

15 II. JURISDICTION AND VENUE

16 11. This Complaint is filed and these proceedings are instituted under Sections 4 and 16
 17 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain
 18 injunctive relief and to recover treble damages and the costs of suit, including a reasonable
 19 attorneys’ fee, against defendants for the injuries sustained by plaintiff and the members of the
 20 Class which she represents by reason of defendants’ and their co-conspirators’ violations, as
 21 hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1).

22 12. Defendants transact business, maintain offices or are found within the Northern
 23 District of California. The interstate commerce described hereinafter is carried on, in part, within
 24 the Northern District of California and the conspiratorial acts herein alleged were carried on, in
 25 part, in the Northern District of California.

26 13. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of
 27 this Court is appropriate because a substantial part of the events or omissions which give rise to the

1 claim occurred in the county of Alameda. Pursuant to Northern District of California, Local Rule
2 3-2(d), assignment to either the San Francisco Division or the Oakland Division is proper.

3 **III. PARTIES**

4 **A. Plaintiff**

5 14. Plaintiff, Lisa Gentilcore, is an individual residing in Alameda County, California.
6 During the Class Period, plaintiff purchased title insurance directly from one or more of the
7 defendants herein and has been injured by reason of the antitrust violations alleged.

8 **B. Defendants**

9 15. Defendant Fidelity National Financial, Inc. (“Fidelity National”) is a Delaware
10 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National
11 does business in California through one or more of its subsidiaries, including but not limited to,
12 defendants Fidelity National Title Insurance Company, Ticor Title Insurance Company, Ticor Title
13 Insurance Company of Florida, National Title Insurance of New York, Inc., Security Union Title
14 Insurance Company, and Chicago Title Insurance Company. Fidelity National is registered to do
15 business in California.

16 16. Defendant Fidelity National Title Insurance Company (“FNTIC”) is a California
17 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
18 FNTIC does business in California, is a licensed title insurance company in California and is
19 registered to do business in California.

20 17. Defendant Ticor Title Insurance Company (“Ticor”) is a California Corporation
21 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor does
22 business in California, is a licensed title insurance company in California and is registered to do
23 business in California.

24 18. Defendant Ticor Title Insurance Company of Florida (“TTICF”) is a Florida
25 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
26 TTICF does business in California, is a licensed title insurance company in California and is
27 registered to do business in California.

1 19. Defendant Chicago Title Insurance Company (“Chicago Title”) is a Missouri
2 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
3 Chicago Title does business in California, is a licensed title insurance company in California and is
4 registered to do business in California.

5 20. Defendant National Title Insurance of New York, Inc. (“NTINY”) is a New York
6 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
7 NTINY does business in California, is a licensed title insurance company in California and is
8 registered to do business in California.

9 21. Defendant Security Union Title Insurance Company (“SUTIC”) is a California
10 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
11 SUTIC does business in California, is a licensed title insurance company in California and is
12 registered to do business in California.

13 22. The Fidelity family of title insurance companies (collectively, “Fidelity”) – which
14 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and SUTIC,
15 and their affiliates – is engaged in selling title insurance to purchasers of commercial and
16 residential real estate throughout the United States, including California. Nationally, Fidelity
17 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly
18 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)
19 and since TIRSA’s inception have charged title insurance rates in New York that TIRSA
20 collectively sets.

21 23. The Fidelity family of title insurance companies and their affiliates are wholly-
22 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,
23 Fidelity National is a provider of title insurance, specialty insurance, and claims management
24 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of title
25 insurance companies engaged in the conduct challenged herein with the approval and assent of
26 defendant Fidelity National.

1 24. Defendant The First American Corporation (“First American”) is a California
2 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. First
3 American does business in California through one or more of its subsidiaries, including but not
4 limited to, defendants First American Title Insurance Company and United General Title Insurance
5 Company.

6 25. Defendant First American Title Insurance Company (“FATIC”) is a California
7 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC does
8 business in California, is a licensed title insurance company in California and is registered to do
9 business in California.

10 26. Defendant United General Title Insurance Company (“UGTIC”) is a Colorado
11 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does
12 business in California, is a licensed title insurance company in California and is registered to do
13 business in California.

14 27. The First American family of title insurance companies (collectively, “First
15 American”) – which includes defendants First American, FATIC and UGTIC, and their affiliates –
16 is engaged in selling title insurance to purchasers of commercial and residential real estate
17 throughout the United States, including California. Nationally, First American accounts for
18 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion. First
19 American Title was a founding member of TIRSA and since TIRSA’s inception has charged title
20 insurance rates in New York that TIRSA collectively sets.

21 28. The First American family of title insurance companies and their affiliates are
22 wholly-owned and controlled by defendant The First American Corporation. Through its
23 subsidiaries, First American is a provider of title insurance, business information, and related
24 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First
25

1 American family of title insurance companies and their affiliates engaged in the conduct
 2 challenged herein with the approval and assent of defendant First American.

3 29. Defendant LandAmerica Financial Group, Inc. (“LandAmerica”) is a Virginia
 4 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does
 5 business in California through one or more of its subsidiaries, including but not limited to,
 6 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation
 7 and Transnation Title Insurance Company.

8 30. Defendant Commonwealth Land Title Insurance Company (“CLTIC”) is a
 9 Pennsylvania corporation with is principle place of business at 5600 Cox Road, Glen Allen,
 10 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in
 11 California and is registered to do business in California.

12 31. Defendant Lawyers Title Insurance Corporation (“LTIC”) is a Nebraska corporation
 13 with is principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060. LTIC does
 14 business in California, is a licensed title insurance company in California and is registered to do
 15 business in California.

16 32. Defendant Transnation Title Insurance Company (“TNTIC”) is a Nebraska
 17 corporation with is principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.
 18 TNTIC does business in California, is a licensed title insurance company in California and is
 19 registered to do business in California.

20 33. The LandAmerica family of title insurance companies (collectively,
 21 “LandAmerica”) – which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their
 22 affiliates – is engaged in selling title insurance to purchasers of commercial and residential real
 23 estate throughout the United States, including California. Nationally, LandAmerica accounts for
 24 approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion.
 25 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA’s
 26 inception have charged title insurance rates in New York that TIRSA collectively sets.

27 34. The LandAmerica family of title insurance companies and their affiliates are
 28 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its

1 subsidiaries, LandAmerica is a provider of title insurance and other products and services that
 2 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.
 3 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title insurance
 4 companies and their affiliates engaged in the conduct challenged herein with the approval of
 5 defendant LandAmerica.

6 35. Defendant Stewart Title Guaranty Company (“STGC”) is a Texas corporation
 7 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in
 8 California, is a licensed title insurance company in California and is registered to do business in
 9 California.

10 36. Defendant Stewart Title Insurance Company (“STIC”) is a New York corporation
 11 with its principle place of business at 300 E. 42nd St., Floor 10, New York, NY 10017. STIC does
 12 business in California, is a licensed title insurance company in California and is registered to do
 13 business in California.

14 37. The Stewart family of title insurance companies (collectively, “Stewart”) – which
 15 includes defendants STGC and STIC, and its affiliates – is engaged in selling title insurance to
 16 purchasers of commercial and residential real estate throughout the United States and California.
 17 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006
 18 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA’s
 19 inception has charged title insurance rates in New York that TIRSA collectively sets.

20 38. Together, defendants account for more than 85 percent of the title premiums
 21 consumers pay in California. Nationally, they account for more than 85 percent of title premiums,
 22 which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages period,
 23 defendants charged California consumers in California virtually identical title insurance rates.

24 IV. OTHER ENTITIES

25 39. TIRSA is a voluntary association of title insurers licensed as a rate service
 26 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains its
 27 offices in New York City, which until recently were located at the same New York address of
 28 Fidelity Title.

40. TIRSA annually compiles from its members statistical data relating to their title insurance premiums, losses and expenses and submits this information in aggregate form to the New York Insurance Department. TIRSA also prepares and submits the New York Title Insurance Rate Manual which sets forth title rates to be charged and rules to be followed by TIRSA's members. The Insurance Department has never objected to any of the rates TIRSA has collectively set. Similarly, the California OIC has not actually held a public hearing or conducted any other review or regulation of the title insurance rates in California for thirty years.

41. TIRSA's membership is comprised of defendant insurers and all other title insurers that are licensed to issue policies in New York. Currently, Fidelity, First American, LandAmerica, and Stewart collectively represent 14 of TIRSA's 22 members. As such, they comprise a majority voting block which, according to TIRSA's by-laws, allows them to control the operations of TIRSA and, in particular, TIRSA's collective rate setting activity.

42. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof.

V. CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the Federal Rules of Civil Procedure, on behalf of herself and a Class consisting of all persons excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who purchased directly, from one or more of the defendants and/or their co-conspirators title insurance for residential and commercial property in California during the four year period preceding this lawsuit and who have sustained damages as a result of the conspiracy herein alleged. The number of potential Class members is so numerous that joinder is impracticable.

44. Plaintiff, as representative of the Class, will fairly and adequately protect the interest of the Class members. The interests of plaintiff are coincident with, and not antagonistic to, those of the Class members.

45. Except as to the amount of damages each member of the Class has by itself sustained, all other questions of fact and law are common to the Class, including but not limited to,

1 the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act
 2 (15 U.S.C. § 1) and the effects of such violation.

3 46. Plaintiff, along with all other members of the Rule (b)(3) Class, were injured as a
 4 result of paying supracompetitive prices for title insurance in California. These supracompetitive
 5 prices were achieved as a result of defendants' illegal price-fixing activities and market allocation
 6 and division.

7 47. Members of the Class include hundreds of thousands, if not millions, of consumers.
 8 They are so numerous that their joinder would be impracticable.

9 48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal
 10 Rules of Civil Procedure, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule
 11 (b)(2) Class includes all members of the (b)(3) Class, and all consumers who are threatened with
 12 injury by the anticompetitive conduct detailed herein.

13 49. Defendants have acted, continued to act, refused to act and continued to refuse to act
 14 on grounds generally applicable to the Rule (b)(2) Class, thereby making appropriate final
 15 injunctive relief with respect to the Rule (b)(2) Class as a whole.

16 50. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions, of
 17 consumers. They are so numerous that their joinder would be impracticable.

18 51. Common questions of law and fact exist with respect to all Class members and
 19 predominate over any questions solely affecting individual Class members. Among the questions
 20 of law or fact common to the class are the following:

- 21 • Whether defendants have engaged in the alleged illegal price-fixing activity
 and market allocation and division.
- 22 • The duration and scope of defendants' alleged illegal price-fixing and market
 allocation and division activity.
- 23 • Whether defendants' alleged illegal price-fixing and market allocation and
 division has caused higher prices to plaintiffs and other purchasers of title
 insurance in California.
- 24 • Whether the Insurance Commissioner has actively supervised defendants'
 price fixing and market allocation and division.

1 52. Plaintiff does not have any conflict of interest with other Class members. Plaintiff's
 2 claims are typical of the claims of the Class and they will fairly and adequately reflect the interests
 3 of the Class. Counsel competent and experienced in federal class action and federal antitrust
 4 litigation has been retained to represent the Class.

5 53. This action is superior to any other method for the fair and efficient adjudication of
 6 this legal dispute since joinder of all members is not only impracticable, but impossible. The
 7 damages suffered by certain members of the Class are small in relation to the expense and burden
 8 of individual litigation and therefore it is highly impractical for such Class members to seek redress
 9 for damages resulting from defendants' anticompetitive conduct.

10 54. There will be no extraordinary difficulty in the management of the Class action.

11 **VI. TRADE AND COMMERCE**

12 55. During all or part of the period in suit, defendants and their co-conspirators were
 13 sellers of title insurance in California.

14 56. During the period in suit, the defendants sold substantial quantities of title insurance
 15 in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in the United
 16 States paid \$17 billion for residential title insurance policies.

17 57. During the period in suit, Class members from locations outside California
 18 purchased commercial or residential property and title insurance within California.

19 58. During the period in suit, the defendants were the major sellers of title insurance in
 20 the United States and California. Defendants controlled in excess of 85 percent of the market for
 21 title insurance in the United States and California.

22 59. The activities of the defendants and their co-conspirators, as described herein, were
 23 within the flow of interstate commerce and substantially affected interstate commerce.

24 **VII. FACTUAL ALLEGATIONS**

25 **A. The Nature of Title Insurance**

26 60. Title insurance is one of most costly items associated with the closing of a real
 27 estate transaction. In California, rates for title insurance are based on a percentage of the total
 28 value of the property being insured. For residential properties, this price ranged in 2005 from

1 about \$1,010 (for a \$250,000.00) property to \$1,490 (for a \$500,000 property). For more
2 expensive homes and commercial properties, these prices are significantly higher. This amount
3 spent on title insurance has risen dramatically over the past decade.

4 61. Title insurance serves an important purpose. It protects the purchaser of a property
5 from any unidentified defects in the title that would in any way interfere with the full and complete
6 ownership and use of the property with the ultimate right to resell the property. Title insurance is
7 required by lenders in most residential and commercial real estate transactions.

8 62. Consumers exercise little discretion in choosing the title insurer from which they
9 purchase the insurance. That decision is typically made for them by their lawyer, mortgage broker,
10 lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not challenged.
11 Most consumers do not even become aware of the price they will pay and to which insurer they
12 will pay it until the actual closing of the real estate transaction. By then it's too late, consumers
13 can't attempt to negotiate a better title insurance price or alternate provider for fear of delaying or
14 derailing the entire transaction. There is no shopping around. There is no negotiation of price.

15 63. This dynamic basically removes the sale of title insurance from the normal
16 competitive process. Unlike the regular forces of supply and demand that keep most industries and
17 their pricing in check, the title insurance industry is not subject to any real competitive constraints.
18 The purchasers of the insurance, in most instances, are not the ones making the purchasing
19 decisions. And, they are certainly in no position to question the price.

20 64. The most effective but illegal way for a particular title insurer to get business is to
21 encourage those making the purchasing decisions – the real-estate middlemen – to steer business to
22 that insurer. The best way to so motivate the middlemen is not through lower prices (that they are
23 not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals, business
24 services and other financial enticements. Therefore, it is through higher pricing (which allows for
25 generous inducements and kick-backs), not lower pricing, that provides the best way for title
26 insurers to compete and increase their business.

1 **B. Price-Fixing in the Large Markets**

2 65. New York is one of several states in which the leading title insurers collectively fix
 3 their prices through a rate-setting organization like TIRSA. There are two principal cost
 4 components that go into TIRSA's calculation. One comprises the risk associated with issuing the
 5 title policy. The other comprises the "agency commissions" paid to title agents.

6 66. The risk component covers the risk the title insurer bears for any undiscovered
 7 defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of
 8 loss to the insurer. That is because title insurance protects against unknown *prior* events that cause
 9 defects in title. With a proper search and examination of prior ownership records, any such defects
 10 can and almost always are readily identified and excluded from the policy's coverage.
 11 Consequently, the average claim payout on a title insurance policy in the United States amounts to
 12 only about 5 percent of the total premium collected. This is very different from property coverage
 13 (such as auto and home insurance) – which protects against *future* occurrences over which the
 14 insurer has little to no control – where the average claim payout amounts to about 80 percent of the
 15 total premium.

16 67. The "agency commissions" component of the title insurance rate covers payments
 17 made to title agents. Defendants have an ownership or management stake in many of the title
 18 agencies to which these payments are made. A small portion of these payments is for the search
 19 and exam of prior ownership records of the property being purchased to identify any liens,
 20 encumbrances, burdens, exclusions, or other defects in the title. The search and exam function
 21 does not involve the spreading or underwriting of risk, and title insurers typically outsource this
 22 task to title agents.

23 68. The remainder, and by far the bulk, of the agency commissions are comprised of
 24 costs unrelated to the issuance of title insurance. These costs include kickbacks and other financial
 25 inducements title insurers provide to title agents and indirectly (through title agents) to the lawyers,
 26 brokers, and lenders who, in reality, are the ones deciding which title insurer to use. These
 27 payments have nothing to do with the issuance of title insurance and are made by title insurers
 28 merely to inflate their revenues and steer business their way.

1 69. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title
 2 insurance premium is based on the so-called "costs" associated with the payment of agency
 3 commissions. Only 15 percent is based on costs associated with the risk of loss.

4 70. TIRSA publishes its final calculated title rates in the New York Title Insurance Rate
 5 Manual. These rates are tied to the value of the property being insured. This is so despite the fact
 6 that the costs associated with agency commissions are entirely unrelated to the value of the
 7 property. Indeed, agency kickbacks and enticements have little to do with producing a particular
 8 title policy and provide no value – proportional to property value or otherwise – to the consumer.
 9 Even search and exam costs are unrelated to property value. They instead depend on the age of the
 10 property, the complexity of the ownership history, and the accessibility of prior ownership records.

11 71. There are other states in which the defendants overly meet and agree to fix the rates
 12 for title insurance as part of a formal collective rate setting process.

13 **C. TIRSA's Formation**

14 72. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served as
 15 the title insurance rate-setting body in New York. NYBTU, along with the title insurance rate
 16 setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal
 17 Trade Commission("FTC") challenge to the collective rate setting activity of many of these
 18 associations. The FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992),
 19 where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate setting
 20 activity of these rating bureaus must be actively supervised by the state.

21 73. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC
 22 contended that the respective state insurance departments merely rubber-stamped this portion of the
 23 collectively fixed rates without any independent review or analysis of their reasonableness or cost
 24 justification. The Supreme Court agreed with the FTC that this kind of limited state oversight was
 25 not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance department has to
 26 "exercise[]sufficient independent judgment and control so that the details of the rates or prices have
 27 been established as a product of deliberate state intervention, not simply by agreement among
 28 private parties." *Ticor*, 504 U.S. at 634-35.

1 74. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand in
 2 *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the
 3 collective rate-setting of certain state rating bureaus was improper because it was not actively
 4 supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed us
 5 that a state's rubber stamp is not enough. Active supervision requires the state regulatory
 6 authorities' independent review and approval." *Id.* at 1139.

7 75. Defendants formulated TIRSA's first rate manual and procedure soon after the
 8 Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme to
 9 get around the rigors of state oversight required by *Ticor*. They have done so by calculating a
 10 single rate that comprises both risk and agency commission costs and by outsourcing to title agents
 11 the agency commission costs. In this way, defendants avoid providing the Insurance Department
 12 with any detailed breakout or backup for the bulk of the costs that make up their collectively fixed
 13 rates.

14 76. TIRSA merely submits an aggregated figure that is supposed to represent the total
 15 agency commission costs. Embedded within this figure is the vast quantity of dollars that are
 16 funneled to and through the title agencies as kickbacks, financial inducements and other costs
 17 unrelated to the issuance of title insurance. Defendants' design in all of this has been to effectively
 18 "hide" the cost basis for their artificially high and collectively fixed title insurance premiums from
 19 the regulatory scrutiny that *Ticor* demands.

20 **D. Lack of Regulatory Supervision and Authority in New York and Other States
 21 Including California**

22 77. There is no provision under the New York Insurance Law for TIRSA to include in
 23 its collectively fixed rates kickbacks and other agency commission payments unrelated to the
 24 issuance of title insurance. Indeed, the New York Insurance Department has openly acknowledged
 25 that it lacks the authority to review any agency commission payments. It has likewise recognized
 26 that defendants' outsourcing of agency commission costs has prevented it from performing a
 27 meaningful review of TIRSA's calculated rates. This was made clear at a November 2006 public
 28 hearing the New York Insurance Department held – the first in 15 years – where it questioned

1 TIRSA and its members on TIRSA's failure to provide the Insurance Department with any backup
 2 or detail for agency commissions.

3 78. At the hearing, the Insurance Department conceded that it could not properly
 4 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost
 5 information on agency commissions that TIRSA does not provide.

6 79. The Insurance Department's recognition that it is not properly supervising TIRSA's
 7 rate-setting activity is consistent with the April 2007 findings of the U.S. Government
 8 Accountability Office ("GAO") that the title insurance industry is in need of greater state
 9 regulation. The GAO studied the industry conditions of several states, including New York, and
 10 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs*
 11 *and operations*, needed to analyze premium prices and underlying costs." (Emphasis added.)

12 80. Unchecked by regulatory review and insulated from competition, defendants have
 13 thus been able to collectively fix title insurance rates at supra competitive levels and earn profits
 14 that vastly exceed those contemplated by the Insurance Department or that would have resulted in a
 15 free and open competitive market.

16 81. At the time of TIRSA's formation, the Insurance Department established 5 percent
 17 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance
 18 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its
 19 revenue and cost information, to ensure that this 5 percent profit level is maintained and based on a
 20 reasonable premium. However, without the authority or ability to scrutinize agency commission
 21 costs, the Insurance Department has been unable to perform this function. As a result, defendants
 22 (through TIRSA) have been able to set artificially high title premiums and secure title profits far in
 23 excess of the 5 percent threshold.

24 82. Through an independent investigation conducted over the past several years, the
 25 New York State Attorney General found that for every dollar of insurance premium defendants
 26 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is paid
 27 out in claims. And, of the roughly 85 cents that supposedly covers agency commissions, only
 28 between 8 and 11 cents goes to costs actually incurred by title agents in producing the title policy.

1 These numbers show that title insurers' collectively fixed rates have resulted in profits that
 2 untethered to and vastly exceed the costs of producing such policies.

3 83. The New York Attorney General's investigation further revealed that what was
 4 largely driving these numbers were the kickbacks and other financial inducements defendants were
 5 funneling to and through title agents to secure more business. As reported at the New York
 6 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it spent
 7 more than \$1 million of these so-called "agency commissions" on items identified as "Christmas",
 8 "automobile expenses", "political contributions", "promotional expenses", and "travel and
 9 entertainment". These expenses are not even remotely related to the issuance of title insurance.

10 84. The Washington State Insurance Commissioner's October 2006 report found
 11 strikingly similarly abuses in Washington. Violations were pervasive and the Commissioner
 12 concluded that consumers were paying too much as a result.

13 85. All of this "excess money" paid to title agents not only works to steer business to
 14 defendants. It also serves to boost defendants' own profits through the inflated revenues they
 15 obtain to cover these agency payments and through their ownership or management stake in many
 16 of these agencies.

17 86. Defendants are competitors in the sale of title insurance to consumers throughout
 18 the United States. These title insurers have agreed and engaged in concerted efforts to
 19 (i) collectively set and charge uniform and supracompetitive rates for title insurance, (ii) include in
 20 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,
 21 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these supposed
 22 "costs" from regulatory scrutiny by funneling them to and through title agents over which the
 23 government agencies have no ability or authority to regulate.

24 87. The GAO in its 2007 report entitled "Actions Needed to Improve Oversight of the
 25 Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of
 26 competition and questions about the reasonableness of prices including:

- 1 • Consumers find it difficult to shop for title insurance,
2 therefore, they put little pressure on insurers and agents to
3 compete based on price;
- 4 • Title agents do not market to consumers, who pay for title
5 insurance, but to those in the position to refer consumers to
6 particular title agents, thus creating potential conflicts of
7 interest;
- 8 • A number of recent investigations by HUD and state
9 regulatory officials have identified instances of alleged illegal
10 activities with the title industry that appear to reduce price
11 competition and could indicate excessive prices;
- 12 • As property values or loan amounts increase, prices paid for
13 title insurance by consumers appear to increase faster than
14 insurers' and agents' costs; and
- 15 • In states where agents' search and examination services are
16 not included in the premium paid by consumers, it is not clear
17 that additional amounts paid to title agents are fully supported
18 by underlying costs.

19 88. The GAO visited several states, including California, and found a lack of regulatory
20 oversight:

21 In the states we visited, we found that regulators did not assess title
22 agents' costs to determine whether they were in line with premium
23 rates; had made only limited efforts to oversee title agents (including
24 ABAs involving insurers and agents); and, until recently, had taken
25 few actions against alleged violations of antikickback laws. In part,
this situation has resulted from a lack of resources and limited
coordination among different regulators within states. On the federal
level, authority for alleged violations of section 8 of RESPA,
including those involving increasingly complex ABAs, is limited to
seeking injunctive relief. Some state regulators expressed frustration
with HUD's level of responsiveness to their requests for help with
enforcement, and some industry officials said that RESPA rules
regarding ABAs and referral fees need to be clarified. Industry and
government stakeholders have proposed several regulatory changes,
including RESPA reform, strengthened regulation of agents, a
competitor right of action with no monetary penalty, and alternative
title insurance models. [*Id.* at 41, footnotes omitted.]

1 **E. Competition Based on Kickbacks and Inducements But Not Rates**

2 89. Having agreed to fix or stabilize prices in New York and other states where they
 3 overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

4 90. In other words, as a direct result of these meetings where rates were agreed to, these
 5 same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well.
 6 To compete on rates in other states could and would imperil their ability to maintain the agreed rate
 7 in states like New York.

8 91. As is the case in New York, a lack of regulatory authority over rates created an
 9 environment in which a conspiracy can and did succeed. No agency was examining why all the
 10 rates were virtually identical, and no agency was examining whether the costs associated with these
 11 premiums were reasonable. This is an environment which is conducive to price fixing.

12 92. In California, there is a lack of regulatory authority and oversight over title
 13 insurance companies. The rates in California are not set as part of a deliberate state intervention
 14 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue in
 15 this case went into effect without review.

16 **F. Other Indicators of a Lack of Competition and Conditions Conducive to Collusive
 17 Rate Setting**

18 93. In addition to the uniformity of rates, other facts suggest that it is more plausible
 19 than not that rates have been set based on an agreement to fix prices.

20 94. In theory, the chain of title should be documented back to its historic grant of
 21 ownership centuries in the past. Fear about a possible title defect in the distant past is widely used
 22 as a justification by title agencies when convincing property buyers to purchase an owner policy in
 23 addition to the lender policy, which is mandatory to secure a mortgage. The title agency, however,
 24 saves much time and money when the search is limited to one or two transactions. They rely on
 25 the insurance policy to cover the remote chance of missing an earlier but still-valid claim. If such a
 26 claim is asserted and survives the scrutiny of the title insurance company's legal department, the
 27 expected cost of compensation is likely to be less than the sum of added overhead costs of
 28 routinely tracing back every chain of title to the earliest registered owner in the distant past.

1 95. Title insurance industry officials tend to justify the large proportion of the premium
2 retained by the title abstract and settlement agency (from 60 to more than 90 percent) by the
3 alleged high cost of title searching back into the distant past. In fact, a high proportion of
4 noncommercial properties are searched only through the most recent transaction. No information
5 is available as to what proportion of claims originate in the distant past. The industry has never
6 published pertinent statistics. It would have a marketing incentive to publish these statistics if the
7 risk were significant; that it has not published these statistics indicates that the risk probably is only
8 slightly greater than zero.

9 96. Many U.S. homes are being resold three or four times in twenty-five years. At each
10 of these occasions, an abstract of title will be prepared on the basis of a more or less thorough
11 review of the available title records, inheritance records, family records and records of past or
12 current liens against a property. It is reasonable, therefore, to suspect that the risk of a title defect
13 will decrease every time a property is sold.

14 97. Title searches have become less labor intensive, especially in large urban counties
15 and cities. More and more of the information is available online. The statistical likelihood that a
16 title default would be overlooked is a closely held industry secret, but it appears to be so small that
17 many transactions are now insured on the basis of a search of the last owner's title history or a
18 search into transactions that occurred during the last twenty-five to thirty-five years. The evidence
19 is strong that the title insurance industry has achieved a remarkably high level of loss minimization.

20 98. Thus the costs of production have decreased as has the risk of loss yet none of these
21 factors has resulted in price competition at the consumer level.

22 99. There is a remarkable absence of rate changes by title insurers over the past five
23 years, despite declining costs of production, increased number of transactions and increased
24 revenue per transaction. During a period when costs per unit of production declined significantly,
25 underwritten title companies and title insurers maintained excessive rates. The prices charged by
26 title insurers and underwritten title companies were not and are not responsive to the changing
27 costs of production or increasing revenue per transaction at a given set of rates. Again, this is
28 indicia of an agreement not to compete based on price.

1 100. As noted, the title companies engage in illegal rebates and kickbacks where the title
 2 insurer or the underwritten title company provides money, free services or other things of value to
 3 a real estate agent, a lender or homebuilder in exchange for business referrals. These illegal rebates
 4 and kickbacks – a consequence of reverse competition – show that title insurance rates are supra
 5 competitive and that some portion of the overcharge is passed from the underwritten title company
 6 or title insurer to the referrer of business.

7 101. A lack of competition and the ability to control prices is enhanced by the fact that
 8 there were few title insurer entrants over the period from 1995 through 2005 and the number of
 9 title insurer groups declined as title insurers acquired other title insurers. There were few
 10 underwritten title company entrants over the 2000 to 2005 period and new entrants were controlled
 11 business arrangements whose addition to the market did not result in greater price competition.

12 102. Access to title plants can be a barrier to entry, but a large barrier to entry exists due
 13 to the established relationships between the entities that can steer the consumer's title and escrow
 14 business and the entities who sell title insurance and escrow services.

15 103. The title insurance market is highly concentrated – a few title insurers account for
 16 the vast majority of title insurance sales – at both the statewide level and at the county level in
 17 California. For example, three title insurer groups account for 77.4% of the market at a statewide
 18 level. At the county level, each individual market was highly concentrated. The GAO found that
 19 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the
 20 ability of companies to fix prices

21 104. The agreement not to compete based on price is also evidenced by the fact that no
 22 company has marketed its services to consumers, the ultimate purchasers of the product. This is in
 23 marked contrast to real insurance, for example, car insurance, where the companies compete
 24 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor," or
 25 Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

VIII. CLAIMS FOR RELIEF

COUNT I

Violation of the Sherman Act

105. Plaintiff incorporates by reference the preceding allegations.

106. Beginning at least as early as February 2004, and continuing thereafter to the present, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

107. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which have been:

(a) to fix, raise, maintain and stabilize the price of title insurance throughout California;

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and

(c) to allocate and divide the market for title insurance in California.

108. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California and is a *per se* violation of Section I of the Sherman Act.

109. Defendants' price-fixing, market allocation and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

110. Through their collective price-fixing, market allocation and division and manipulation of the regulatory process, defendants have harmed competition by charging consumers supra competitive prices for title insurance in California, evidenced in part by the fact that the prices are uniformly higher than compared with the cost of providing the insurance.

111. The aforesaid combination and conspiracy has had the following effects among others:

(a) price competition in the sale of title insurance has been suppressed, restrained and eliminated;

(b) prices for title insurance have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and

(c) purchasers of title insurance have been deprived of the benefit of free and open competition.

112. During the period of the antitrust violations by defendants and their co-conspirators, plaintiff and each member of the Class she represents, has purchased title insurance and, by reason of the antitrust violations herein alleged, paid more for such that it would have paid in the absence of said antitrust violations. As a result, plaintiff and each member of the Class she represents, has been injured and damaged in an amount presently undetermined.

COUNT II

Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.*

113. Plaintiff incorporates by reference the preceding allegations.

114. Defendants conduct as set forth above is in violation of the Cartwright Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

115. As a direct result of defendants' unlawful acts plaintiffs have paid artificially inflated prices for title insurance and have suffered injury to their business and property.

COUNT III

(California's Business & Professions Code §§ 17200, *et seq.*)

116. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of herself and the members of the Class.

117. Defendants' statements and representations constitute unfair, unlawful and deceptive trade practices in violation of the UCL.

118. All of the wrongful conduct alleged herein occurs and continues to occur in the conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is repeated in the State of California on hundreds, if not thousands, of occasions daily.

119. Plaintiff has suffered injury in fact and has lost money or property as a result of defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance than she would or should have absent the conduct complained of.

120. Plaintiff requests that this Court enter such orders or judgment as may be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to restore to any person in interest any money which may have been acquired by means of such unfair competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

COUNT IV

UNJUST ENRICHMENT

121. Plaintiff incorporates by reference the preceding allegations.

122. This Cause of Action is pled in the alternative to all claims and/or causes of action at law.

123. Defendant has received a benefit from plaintiff and the Class members in the form of the prices plaintiff and the Class members paid for defendants' title insurance.

124. Defendants are aware of their receipt of the above-described benefit.

125. Defendants received the above-described benefit to the detriment of plaintiff and each of the other members of the Class.

126. Defendants continue to retain the above-described benefit to the detriment of plaintiff and the Class members.

127. As a result of defendants' unjust enrichment, plaintiff and the Class members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution.

1 of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or
 2 wrongful conduct alleged above.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff demands:

5 A. That the alleged combination and conspiracy among the defendants and their
 6 co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of
 7 Section 1 of the Sherman Act;

8 B. That the Court declare that the premiums charged are excessive under state law and
 9 order damages;

10 C. That judgment be entered against defendants, jointly and severally, and in favor of
 11 plaintiff, and each member of the Class it represents, for threefold the damages determined to have
 12 been sustained by plaintiff, and each member of the Class it represents, together with the cost of
 13 suit, including a reasonable attorneys' fee;

14 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their
 15 respective officers, directors, agents and employees, and all other persons acting or claiming to act
 16 on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any
 17 manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination,
 18 conspiracy, agreement, understanding or concert of action, adopting or following any practice,
 19 plan, program, or design having a similar purpose or effect in restraining competition; and

20 E. Such other and further relief as may appear necessary and appropriate.

21 **JURY TRIAL DEMANDED**

22 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged herein.

23 DATED: March 11, 2008.

24 HAGENS BERMAN SOBOL SHAPIRO LLP

25 By _____
 26 _____
 27 _____
 28 _____


 JEFF D. FRIEDMAN (173886)

1 Reed R. Kathrein (139304)
2 715 Hearst Avenue, Suite 202
3 Berkeley, CA 94710
4 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
jefff@hbsslaw.com
reed@hbsslaw.com

5 Steve W. Berman
6 Anthony D. Shapiro
7 Thomas E. Loeser (202724)
HAGENS BERMAN SOBOL SHAPIRO LLP
8 1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com
tony@hbsslaw.com
toml@hbsslaw.com

12 Steven J. Greenfogel
13 MEREDITH COHEN GREENFOGEL &
SKIRNICK, P.C.
14 1521 Locust Street, 8th Floor
Philadelphia, PA 19102
15 Telephone: (215) 564-5182
Facsimile: (215) 569-0958

16 Douglas A. Millen
William London
17 FREED KANNER LONDON & MILLEN LLC
2201 Waukegan Road, Suite 130
18 Bannockburn, IL 60015
Telephone: (224) 632-4500
Facsimile: (224) 632-4521

21 Vincent J. Esades
Heins Mills & Olson P.L.C.
22 310 Clifton Avenue
Minneapolis, MN 55403
23 Telephone: (612) 338-4605
Facsimile: (612) 338-4692

24 Attorneys for Plaintiff

EXHIBIT 3

1 DONALD AMAMGBO
2 123 OAKPORT, SUITE 4900
3 OAKLAND, CA 94621
4 TELEPHONE: 510 615 6000
5 FACSIMILE: 510 615 6025

6 REGINALD TERRELL
7 THE TERRELL LAW GROUP
8 223 25TH STREET
9 RICHMOND 94804
10 TELEPHONE: 510 237 9700
11 FACSIMILE: 510 237 4616

12 Attorneys for Plaintiff

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 LISA BLACKWELL, on Behalf of herself
16 and All Others Similarly Situated,

17 Plaintiff,

18 vs.

19 FIDELITY NATIONAL FINANCIAL,
20 INC., FIDELITY NATIONAL TITLE
21 INSURANCE COMPANY, TICOR TITLE
22 INSURANCE COMPANY, TICOR TITLE
23 INSURANCE COMPANY OF FLORIDA,
24 CHICAGO TITLE INSURANCE
25 COMPANY, NATIONAL TITLE
26 INSURANCE OF NEW YORK, INC.,
27 SECURITY UNION TITLE INSURANCE
COMPANY, THE FIRST AMERICAN
CORPORATION, FIRST AMERICAN
TITLE INSURANCE COMPANY,
UNITED GENERAL TITLE INSURANCE
COMPANY, LANDAMERICA
FINANCIAL GROUP, INC.,
COMMONWEALTH LAND TITLE
INSURANCE COMPANY, LAWYERS
TITLE INSURANCE CORPORATION,
TRANSNATION TITLE INSURANCE
COMPANY, STEWART TITLE
GUARANTY COMPANY and STEWART
TITLE INSURANCE COMPANY

10 No.

11 C08-01928

12 CIVIL - CLASS ACTION

13 JURY TRIAL DEMANDED

ADR
MEJ

14 ORIGINAL
15 FILED
16 APR 11 2008
17 RICHARD W. WIEKING
18 CLERK U.S. DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO

1 Defendants

2 Plaintiff Lisa Blackwell, by her attorneys, on behalf of herself and all others similarly
3 situated brings this action for treble damages and injunctive relief under the antitrust laws of the
4 United States and based on statutes of the State of California against the above-named
5 defendants, demand a trial by jury, and complaining and alleging as follows:

6 **I. INTRODUCTION**

7 1. From the consumer's point of view, title insurance differs greatly from other, more
8 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies
9 protect consumers from an event that may occur in the future, title insurance offers protection
10 from events that might have occurred in the past.

11 2. Most simply, title insurance is protection purchased against a loss arising from
12 problems that occurred in the past and may affect the title to the real estate that a consumer is
13 buying. Title insurers do not compete on the basis of the policies or coverage that they provide.
14 In fact, almost all title policies are based on a single set of form policies published and
15 maintained by the national trade association, the American Land Title Association. Furthermore,
16 the end goal of an exhaustive title search by a title insurer is not to provide coverage for title
17 defects that the search uncovers, but rather to exclude coverage for any such defects and
18 therefore, further reduce the real value of the title policy which is written to cover only unknown
19 defects in title at the time of issuance. As a result, title insurance is a commodity product.

20 3. Even for the savviest of insurance consumers, the purchase of a title insurance
21 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of
22 paperwork and signings that culminate in the closing of a home purchase. Consumers, who
23 normally show around for their insurance and carefully compare prices, typically emerge from
24 the closing on their new home holding an insurance policy that they know virtually nothing about
25 and that in all likelihood, they will never need.

26 4. The title insurance market in California consists of a dozen carriers, ranging in
27 size from regional companies to national affiliates. However, the market is dominated by four
28 groups of affiliated companies which, combined, sell over 90 percent of the title insurance

1 policies sold in California and which own and control the title plants in many California counties
2 that every title insurer must rely on in order to issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional
4 insurance carriers, choose not to market their products directly to the consumers who pay for
5 them. Instead, the title insurance industry operates on what is termed a "reverse competition"
6 model. Reverse competition means that title companies solicit business referrals from the other
7 major players in the home purchase scenario - real estate agents and agencies, banks, lenders,
8 builders, developers and others: middlemen or go-betweens. The title companies pay middlemen
9 for these referrals in the form of direct payments, advertising expenses, junkets, parties and other
10 kick-backs and inducements. In addition, middlemen such as Windermere, John L. Scott and
11 Caldwell Bank-Bain, who themselves control a significant portion of the real estate brokerage
12 market, take significant ownership stakes in local title agents and affiliates of the major title
13 insurers and thereby get a direct return in profit from the referral of title business to the title agent
14 whom they partly or wholly own.

15 6. Reverse competition, as the term suggests, isn't a model that benefits consumers
16 through market-driven forces. In fact, consumers are bypassed completely as title companies
17 spend nearly all of their marketing budgets "wining and dining" real estate agents, banks, lenders,
18 builders, developers and others in an effort to convince these middlemen to steer their home-
19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance
22 authority. The rates are not subject to any meaningful review of regulation. The companies
23 agree to fix the price of title insurance far in excess of the risk and loss experience associated
24 with such insurance. As a result of the joint agreement as to rates, competition is relegated to the
25 middleman. As a result of their joint rate setting and agreement, no company competes on price
26 to the consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies
28 agreed to not compete based on price to the consumer in other states, including California, where

regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive prices and to compete based on offering inducements to middlemen. In California, in three successive reports, the Office of the Insurance Commissioner (“OIC”) has found an “astonishing number” of such inducements that are in violation of state law. However, the OIC does not actively oversee or regulate rates, and, in fact, does not buy its own admission have the power to do so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their
8 agents divide the market of real-estate middlemen through the use of Affiliated Business
9 Arrangements (“ABAs”), wherein the dominant real estate brokers purchase significant
10 ownership in favored title insurance affiliates. The real estate brokers then reward their
11 associates for using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a class of those purchasing title insurance in
13 California seek damages arising from defendants' violations of the Sherman Act as well as
14 California statutory law.

II. JURISDICTION AND VENUE

17 11. This Complaint is filed and these proceedings are instituted under Section 4 and
18 16 of the Act of Congress of October 15, 1914 C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to
19 obtain injunctive relief and to recover treble damages and the costs of suit, including a reasonable
20 attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the
21 Class which she represents by reason of defendants' and their co-conspirators' violations, as
22 hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

23 12. Defendants transact business, maintain offices or are found within the Northern
24 District of California. The interstate commerce described hereinafter is carried on, in part, within
25 the Northern District of California and the conspiratorial acts herein alleged were carried on, in
part, in the Northern District of California.

27 13. Intra-district Assignment: Assignment to the San Francisco or Oakland division
28 of this court is appropriate because a substantial part of the events or omission which give rise to

1 the claim occurred in the county of San Francisco. Pursuant to Northern District of California,
2 Local Rule 3-2(d), assignment to either the San Francisco Division or the Oakland Division is
3 proper.

III. PARTIES

5 14. Plaintiff Lisa Blackwell, is an individual residing in San Francisco County,
6 California. During the class period, plaintiff purchased title insurance directly from one or more
7 of the defendants herein and has been injured by reason of the antitrust violations alleged.

8 15. Defendant Fidelity National Financial, Inc. (“Fidelity National”) is a Delaware
9 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity
10 National does business in California through one or more of its subsidiaries, including but not
11 limited to defendants Fidelity National Title Insurance Company, Ticor Title Insurance
12 Company, Ticor Title Insurance Company of Florida, National Title Insurance of New York,
13 Inc., Security Union Title Insurance Company, and Chicago Title Insurance Company. Fidelity
14 National is registered to do business in California.

15 16. Defendant Fidelity National Title Insurance Company (“FNTIC”) is a California
16 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida
17 32204. FNTIC does business in California, is a licensed title insurance company in California
18 and is registered to do business in California.

19 17. Defendant Ticor Title Insurance Company (“Ticor”) is a California Corporation
20 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor
21 does business in California, is a licensed title insurance company in California and is registered to
22 do business in California.

23 18. Defendant Ticor Title Insurance Company of Florida (“TTICF”) is a Florida
24 corporation with its principle place of business 601 Riverside Ave., Jacksonville, Florida 32204.
25 TTICF does business in California, is a licensed title insurance company in California and is
26 registered to do business in California.

27 19. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri
28 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida

1 32204. Chicago Title does business in California, is a licensed title insurance company in
2 California and is registered to do business in California.

3 20. Defendant National Title Insurance of New York, Inc. ("NYINY") is a New York
4 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida
5 32204. NYINY does business in California, is a licensed title insurance company in California
6 and is registered to do business in California.

7 21. Defendant Security Union Title Insurance Company Chicago Title Insurance
8 Company ("Chicago Title") is a Missouri Corporation with its principle place of business at 601
9 Riverside Ave., Jacksonville, Florida 32204. Chicago Title does business in California, is a
10 licensed title insurance company in California and is registered to do business in California.

11 22. The Fidelity family of title insurance companies (collectively, "Fidelity") - which
12 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NYINY and SUTIC,
13 and their affiliates - are engaged in selling title insurance to purchases of commercial and
14 residential real estate throughout the United States, including California. Nationally, Fidelity
15 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly
16 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined
17 below) and since TIRSA's inception have charged title insurance rates in New York that TIRSA
18 collectively sets.

19 23. The Fidelity family of title insurance companies and their affiliates are wholly-
20 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,
21 Fidelity National is a provider of title insurance, specialty insurance, and claims management
22 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of
23 title insurance companies engaged in the conduct challenged herein with the approval and assent
24 of defendant Fidelity National.

25 24. Defendant The First American Corporation ("First American") is a California
26 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. First
27 American does business in California through one or more its subsidiaries, including but not
28 limited to, defendant First American Title Insurance Company and United General Title

1 Insurance Company.

2 25. Defendant First American Title Insurance Company ("FATIC") is a California
3 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC
4 does business in California is a licensed title insurance company in California and is registered to
5 do business in California.

6 26. Defendant United General Title Insurance Company ("UGTIC") is a Colorado
7 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does
8 business in California, is a licensed title insurance company in California and is registered to do
9 business in California.

10 27. The First American family of title insurance companies (collectively, "First
11 American") - which includes defendants First American, FATIC and UGTIC, and their affiliates
12 - is engaged in selling title insurance to purchasers of commercial and residential real estate
13 throughout the United States, including California. Nationally, First American accounts for
14 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion.
15 First American Title was a founding member if TIRSA and since TIRSA's inception has charged
16 title insurance rates in New York that TIRSA collectively sets.

17 28. The First American family of title insurance companies and their affiliates are
18 wholly-owned and controlled by defendant The First American Corporation. Through its
19 subsidiaries, First American is a provider of title insurance, business information, and related
20 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First
21 American family of title insurance companies and their affiliates engaged in the conduct
22 challenged herein with the approval and assent of defendant First American.

23 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia
24 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does
25 business in California through one or more of its subsidiaries, including but not limited to,
26 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation
27 and Trans-nation Title Insurance Company.

28 30. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a

1 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,
2 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in
3 California and registered to do business in California.

4 31. Defendants Lawyers Title Insurance Corporation ("LTIC") is a Nebraska
5 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.
6 LTIC does business in California, is a licensed title insurance company in California and is
7 registered to do business in California.

8 32. Defendants Trans-nation Title Insurance Corporation ("TNTIC") is a Nebraska
9 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.
10 TNTIC does business in California, is a licensed title insurance company in California and is
11 registered to do business in California.

12 33. The LandAmerica family of title insurance companies (collectively,
13 "LandAmerica") - which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their
14 affiliates - is engaged in selling title insurance to purchasers of commercial and residential real
15 estate throughout the United States, including California. Nationally, LandAmerica accounts for
16 approximately 19 percent of title premiums, which in 2006 amount to roughly \$3.15 billion.
17 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA's
18 inception have charged title insurance rates in New York that TIRSA collectively sets.

19 34. The LandAmerica family of title insurance companies and their affiliates are
20 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its
21 subsidiaries, LandAmerica is a provider of title insurance and other products and services that
22 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.
23 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title
24 insurance companies and their affiliates engaged in the conduct challenged herein with the
25 approval of defendant LandAmerica.

26 35. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation
27 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in
28 California, is a licensed title insurance company in California and is registered to do business in

1 California.

2 36. Defendant Stewart Title Insurance Company ("STIC") is a New York corporation
3 with its principle place of business at 300 E. 42nd St., Floor 10, New York, NY 10017. STIC
4 does business in California, is a licensed title insurance company in California and is registered to
5 do business in California.

6 37. The Stewart family of title insurance companies (collectively, "Stewart") - which
7 includes defendants STGC and STIC, and its affiliates - is engaged in selling title insurance to
8 purchasers of commercial and residential real estate throughout the United States and California.
9 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006
10 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's
11 inception has charged title insurance rates in New York that TIRSA collectively sets.

12 38. Together, defendants account for more than 85 percent of title premiums
13 consumers pay in California. Nationally, they account for more than 85 percent of title
14 premiums, which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages
15 period, defendants charged California consumers in California virtually identical title insurance
16 rates.

17 IV. **OTHER ENTITIES**

18 39. TIRSA is a voluntary association of title insurers licensed as a rate service
19 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains
20 its offices in New York City, which until recently were located at the same New York address of
21 Fidelity Title.

22 40. TIRSA annually compiles from its members statistical data relating to their title
23 insurance premiums, losses and expenses and submits this information in aggregate form to the
24 New York Insurance Department. TIRSA also prepares and submits the New York Title
25 Insurance Rate Manual which sets forth title rates to be charged and rules to be followed by
26 TIRSA's members. The Insurance Department has never objected to any of the rates TIRSA has
27 collectively set. Similarly, the California OIC has not actually held a public hearing or conducted
28 any other review or regulation of the title insurance rates in California for thirty years.

41. TIRSA's membership is comprised of defendant insurers and all other title insurers that are licensed to issue policies in New York. Currently, Fidelity, First American, LandAmerica and Stewart collectively represent 14 of TIRSA's 22 members. As such, they comprise a majority voting block which, according to TIRSA's by-laws, allows them to control the operations of TIRSA and, in particular, TIRSA's collective rate setting activity.

42. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof.

V. CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the Federal Rules of Civil Procedure, on behalf of herself and a class consisting of all persons excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who purchased directly, from one or more of the defendants and/or their co-conspirators title insurance for residential and commercial property in California during the four year period preceding this lawsuit and who have sustained damages as a result of the conspiracy herein alleged. The number of potential class members is so numerous that joinder is impracticable.

44. Plaintiff, as representative of the class, will fairly and adequately protect the interest of the class members. The interests of plaintiff are coincident with, and not antagonistic to, those of the class members.

45. Except as to the amount of damages each member of the class has by itself sustained, all other questions of fact and law are common to the class, including but not limited to, the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act (15 U.S.C. §1) and the effects of such violation.

46. Plaintiff, along with all other members of the Rule (b) (3) class, were injured as a result of paying supra-competitive prices for title insurance in California. The supra-competitive prices were achieved as a result of defendants' illegal price-fixing activities and market allocation and division.

47. Members of the class include hundreds of thousands, if not millions, of

1 consumers. They are so numerous that their joinder would be impracticable.

2 48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal
3 Rules of Civil Procedure, for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule
4 (b) (2) class includes all members of the (b) (3) class, and all consumers who are threatened with
5 injury by the anticompetitive conduct detailed herein.

6 49. Defendants have acted, continued to act, refused to act and continued to refuse to
7 act on grounds generally applicable to Rule (b) (2) class, thereby making appropriate final
8 injunctive relief with respect to the Rule (b) (2) class as a whole.

9 50. Members of the Rule (b) (2) class include hundreds of thousands, if not millions,
10 of consumers. They are so numerous that their joinder would be impracticable.

11 51. Common questions of law and fact exist with respect to all class members and
12 predominate over any questions solely affecting individual class members. Among the questions
13 of law of fact common to the class are the following:

- 14 • Whether defendants have engaged in the alleged illegal price-fixing activity and
15 market allocation and division.
- 16 • The duration and scope of defendants' alleged illegal price-fixing and market
17 allocation and division activity.
- 18 • Whether defendants' alleged illegal price-fixing and market allocation and
19 division has caused higher prices to plaintiffs and other purchasers of title
20 insurance in California.
- 21 • Whether the Insurance Commissioner has actively supervised defendants' price
22 fixing and market allocation and division.

23 52. Plaintiff does not have any conflict of interest with other class members.
24 Plaintiff's claims are typical of the claims of the class and they will fairly and adequately reflect
25 the interests of the class. Counsel competent and experienced in federal class action and federal
26 antitrust litigation has been retained to represent the class.

27 53. This action is superior to any other method for the fair and efficient adjudication

1 of this legal dispute since joinder of all members is not only impracticable, but impossible. The
2 damages suffered by certain members of the class are small in relation to the expense and burden
3 of individual litigation and therefore it is highly impractical for such class members to seek
4 redress for damages resulting from defendants' anticompetitive conduct.
5

6 54. There will be no extraordinary difficulty in the management of the class action.

7 **VI. TRADE AND COMMERCE**

8 55. During all or part of the period in suit, defendants and their co-conspirators were
9 sellers of title insurance in California.

10 56. During the period in suit, the defendants sold substantial quantities of title
11 insurance in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in
12 the United States paid \$17 billion for residential title insurance policies.

13 57. During the period in suit, class members from locations outside California
14 purchased commercial or residential property and title insurance within California.

15 58. During the period in suit, the defendants were the major sellers of title insurance
16 in the United States and California. Defendants controlled in excess of 85 percent of the market
17 for title insurance in the United States and California.

18 59. The activities of the defendants and their co-conspirators, as described herein,
19 were within the flow of interstate commerce and substantially affected interstate commerce.

20 **VII. FACTUAL ALLEGATIONS**

21 **A. The Nature of Title Insurance**

22 60. Title insurance is one of most costly items associated with the closing of real
23 estate transaction. In California, rates for title insurance are based on a percentage of the total
24 value of the property being insured. For residential properties, this price ranged in 2005 from
25 about \$1,010 (for a \$250,000.00) property to \$1,490 (for a \$500,000.00 property). For more
26 expensive homes and commercial properties, these prices are significantly higher. This amount
27 spent on title insurance has risen dramatically over the past decade.
28

1 61. Title insurance serves an important purpose. It protects the purchaser of a
2 property from any unidentified defects in the title that would in any way interfere with the full
3 and complete ownership and use of the property with the ultimate right to resell the property.
4 Title insurance is required by lenders in most residential and commercial real estate transactions.

5 62. Consumers exercise little discretion in choosing the title insurer from which they
6 purchase the insurance. That decision is typically made for them by their lawyer, mortgage
7 broker, lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not
8 challenged. Most consumers do not even become aware of the price they will pay and to which
9 insurer they will pay it until the actual closing of the real estate transaction. By then its too late,
10 consumers can't attempt to negotiate a better title insurance price or alternate provider for fear of
11 delaying or derailing the entire transaction. There is no shopping around. There is no negotiation
12 of price.

13 63. This dynamic basically removes the sale of title insurance from the normal
14 competitive process. Unlike the regular forces of supply and demand that keep most industries
15 and their pricing in check, the title insurance industry is not subject to any real competitive
16 constraints. The purchasers of the insurance, in most instances, are not the ones making the
17 purchasing decisions. And, they are certainly in no position to question the price.

18 64. The most effective but illegal way for a particular title insurer to get business is to
19 encourage those making the purchasing decisions - the real-estate middlemen - to steer business
20 to that insurer. The best way to so motivate the middlemen is not through lower prices (that they
21 are not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals,
22 business services and other financial enticements. Therefore, it is through higher pricing (which
23 allows for generous inducements and kick-backs), not lower pricing, which provides the best way
24 for title insurers to compete and increase their business.

25 **B. Price-Fixing in the Large Markets**

26 65. New York is one of several states in which the leading title insurers collectively
27 fix their prices through a rate-setting organization like TIRSA. There are two principal cost
28 components that go into TIRSA's calculation. One comprises the risk associated with issuing the

1 title policy. The other comprises the "agency commissions" paid to title agents.

2 66. The risk components cover the risk the title insurer bears for any undiscovered
3 defects in the title. Unlike property insurance, title insurance carriers with it a very limited risk
4 of loss to the insurer. That is because title insurance protects against unknown prior events that
5 cause defects in title. With a proper search and examination of prior ownership records, any such
6 defects can and almost always are readily identified and excluded from the policy's coverage.
7 Consequently, the average claim on a title insurance policy in the United States amounts to only
8 about 5 percent of the total premium collected. This is very different from property coverage
9 (such as auto and home insurance) - which protects against future occurrences over the insurer
10 has little or no control - where the average claim payout amounts to about 80 percent of the total
11 premium.

12 67. The "agency commissions" component of the title insurance rate covers payments
13 made to title agents. Defendants have an ownership or management stake in many of the title
14 agencies to which these payments are made. A small portion of these payments is for the search
15 and exam of prior ownership records of the property being purchased to identify any liens,
16 encumbrances, burdens, exclusions, or other defects in the title. The search and exam function
17 does not involve the spreading or underwriting of risk, and title insurers typically outsource this
18 task to title agents.

19 68. The remainder, and by far the bulk, of the agency commission are comprised of
20 costs unrelated to the issuance of title insurance. These costs include kickbacks and other
21 financial inducements title insurers provide to title agents and indirectly (through title agents) to
22 the lawyers, brokers, and lenders who, in reality, are the ones deciding which title insurer to use.
23 These payments have nothing to do with the issuance of title insurance and are made by title
24 insurers merely to inflate their revenues and steer business their way.

25 69. Under TIRSA's collective rate setting regime, roughly 85 percent of the total tile
26 insurance premium is based on the so-called "costs" associated with the payment of agency
27 commissions. Only 15 percent is based on costs associated with the risk of loss.

28 70. TIRSA publishes its final calculated title rates in the New York Title Insurance

1 Rate Manual. These rates are tied to the value of the property being insured. This is so despite
2 the fact that the costs associated with agency commissions are entirely unrelated to the value of
3 the property. Indeed, agency kickbacks and enticements have little to do with producing a
4 particular title policy and provide no value - proportional to property value. They instead depend
5 on the age of the property, the complexity of the ownership history, and the accessibility of prior
6 ownership records.

7 71. There are other states in which the defendants overly meet and agree to fix the
8 rates for title insurance as part of a formal collective rate setting process.

9 **C. TIRSA's Formation**

10 72. Prior to TIRSA, the New York Board of Underwriters ("NYBTU") served as the
11 title insurance rate-setting body in New York. NYBTU, along with the title insurance rate setting
12 bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal Trade
13 Commission ("FTC") challenge to the collective rate setting activity of many of these
14 associations. The FTC's challenge culminated in *FTC v. Ticor Title Inc. Co.*, 504 U.S. 621
15 (1992), where the Supreme Court held that to avoid *per se* illegal price fixing, the rate setting
16 activity of these rating bureaus must be actively supervised by the state.

17 73. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC
18 contended that the respective state insurance departments merely rubber-stamped this portion of
19 the collectively fixed rates without any independent review or analysis of their reasonableness or
20 costs justification. The Supreme Court agreed with the FTC that this kind of limited state
21 oversight was not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance
22 department has to "exercise sufficient independent judgment and control so that the details of the
23 rates or prices have been established as a product of deliberate state intervention, not simply by
24 agreement among private parties." *Ticor*, 504 U.S. at 634-35.

25 74. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand
26 in *Ticor Title Ins. Co. v. FTC*, 998 F.2D 1129 (3d Cir. 1992), upheld the FTC's finding that the
27 collective rate-setting of certain state rating bureaus was improper because it was not actively
28 supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed

1 us that a state's rubber stamp is not enough. Active supervision requires the state regulatory
2 authorities' independent review and approval". *Id.* at 1139.

3 75. Defendants formulated TIRSA's first rate manual and procedure soon after the
4 Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme
5 to get around the rigors of state oversight required by *Ticor*. They have done so by calculating a
6 single rate that comprises both risk and agency commission costs and by outsourcing to title
7 agents the agency commission costs. In this way, defendants avoid providing the Insurance
8 Department with any detailed breakout or backup for the bulk of the costs that make up their
9 collectively fixed rates.

10 76. TIRSA merely submits an aggregated figure that is supposed to represent the total
11 agency commission costs. Embedded within this figure is the vast quantity of dollars that are
12 funneled to and through the title agencies as kickbacks, financial inducements and other costs
13 unrelated to the issuance of title insurance. Defendants' design in all of this has been to effective
14 "hide" the costs basis for their artificially high and collectively fixed title insurance premiums
15 from the regulatory scrutiny that *Ticor* demands.

16 **D. Lack of Regulatory Supervision and Authority in New York and Other States
17 Including California**

18 77. There is no provision under the New York Insurance Law for TIRSA to include in
19 its collectively fixed rates kickbacks and other agency commission payments unrelated to the
20 issuance of title insurance. Indeed, the New York Insurance Department has openly
21 acknowledged that it lacks the authority to review any agency commission payments. It has
22 likewise recognized that defendants' outsourcing of agency commission costs has prevented it
23 from performing a meaningful review of TIRSA's calculated rates. This was made clear at a
24 November 2006 public hearing at New York Insurance Department held - the first in 15 years -
25 where it questioned TIRSA and its members on TIRSA's failure to provide the Insurance
26 Department with any backup or detail for agency commissions.

27 78. At the hearing, the Insurance Department conceded that it could not properly
28 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed costs

1 information on agency commissions that TIRSA does not provide.

2 79. The Insurance Department's recognition that it is not properly supervising
 3 TIRSA's rate-setting activity is consistent with the April 2007 findings of the U.S. Government
 4 Accountability Office ("GAO") that the title insurance industry is in need of greater state
 5 regulation. The GAO studied the industry conditions of several states, including New York, and
 6 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs and operations*, needed to analyze premium prices and underlying costs." (Emphasis
 7 added.)

8 80. Unchecked by regulatory review and insulated from competition, defendants have
 9 thus been unable to collectively fix title insurance rates at supra competitive levels and ear profits
 10 that vastly exceed those contemplated by the Insurance Department or that would have resulted in
 11 a free and open competitive market.

12 81. At the time of TIRSA's formation, the Insurance Department established 5 percent
 13 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance
 14 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its
 15 revenue and cost formation, to ensure that this 5 percent profit level is maintained and based on a
 16 reasonable premium. However, without the authority or ability to scrutinize agency commission
 17 costs, the Insurance Department has been unable to perform this function. As a result, defendants
 18 (through TIRSA) have been able to set artificially high title premiums and secure title profits far
 19 in excess of the 5 percent threshold.

20 82. Through an independent investigation conducted over the past several years, the
 21 New York State Attorney General found that for every dollar of insurance premium defendants
 22 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is
 23 paid out of claims. And, of the roughly 85 cents that supposedly covers agency commissions,
 24 only between 8 and 11 cents goes to costs actually incurred by title agents in producing the title
 25 policy. These numbers show that title insurers' collectively fixed rates have resulted in profits
 26 that vastly exceed the costs of producing such policies.

27 83. The New York Attorney General's investigation further revealed that what were
 28

1 largely driving these numbers were the kickbacks and other financial inducements defendants
2 were funneling to and through title agents to secure more business. As reported at the New York
3 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it
4 spent more than \$1 million of these so-called "agency commissions" on items identified at
5 "Christmas", "automobile expenses", "political contributions", "promotional expenses", and
6 "travel and entertainment". These expenses are not even remotely related to the issuance of title
7 insurance.

8 84. The Washington State Insurance Commissioner's October 2006 report found
9 strikingly similarly abuses in Washington. Violations were pervasive and the Commissioner
10 concluded that consumers were paying too much as a result.

11 85. All of this "excess money" paid to title agents not only works to steer business to
12 defendants. It also served to boost defendants' own profits through the inflated revenues they
13 obtain to cover these agency payments and through their ownership or management stake in
14 many of these agencies.

15 86. Defendants are competitors in the sale of title insurance to consumers throughout
16 the United States. These title insurers have agreed and engaged in concerted efforts to (i)
17 collectively set and charge uniform and supra competitive rates for title insurance, (ii) include in
18 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,
19 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these
20 supposed "costs" from regulatory scrutiny by funneling them to and through title agents over
21 which the government agencies have no ability or authority to regulate.

22 87. The GAO in its 2007 report entitled "actions Needed to Improve Oversight of the
23 Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of
24 competitions and questions about the reasonableness of prices including:

- 25 • Consumers find it difficult to shop for title insurance, therefore, they put little
26 pressure on insurers and agents to compete based on price;
27 • Title agents do not market to consumers, who pay for title insurance, but to those
28 in the position to refer consumers to particular title agents, thus creating potential

1 conflicts of interest;

- 2 • A number of recent investigations by HUD and state regulatory officials have
3 identified instances of alleged illegal activities with the title industry that appear to
4 reduce price competition and could indicate excessive prices;
- 5 • As property values or loan amounts increase, prices paid for title insurance by
6 consumers appear to increase faster than insurers' and agents' costs; and
- 7 • In states where agents' search and examination services are not included in the
8 premium paid by consumers, it is not clear that additional amounts paid to title
9 agents are fully supported by underlying costs.

10 88. The GAO visited several states including California, and found a lack of
11 regulatory oversight:

12 In the states we visited, we found that regulators did not assess title
13 agents' costs to determine whether they were in line with premium rates; had
14 made only limited efforts to oversee title agents (including ABAs involving
15 insurers and agents); and, until recently, had taken few actions against alleged
16 violations of anti-kickback laws. In part, this situation has resulted from a lack
17 of resources and limited coordination among different regulators within states.
18 On the federal level, authority for alleged violations of section 8 of RESPA,
19 including those involving increasingly complex ABAs, is limited to seeking
20 injunctive relief. Some state regulators expressed frustration with HUD's level
21 of responsiveness to their requests for help with enforcement, and some
22 industry officials said that RESPA rules regarding ABAs and referral fees need
23 to be clarified. Industry and government stakeholders have proposed several
24 regulatory changes, including RESPA reform, strengthened regulation of
25 agents, a competitor right of action with no monetary penalty, and alternative
26 title insurance models. [*Id.* at 41, footnotes omitted.]

27 **E. Competition Based on Kickbacks and Inducements But Not Rates**

28 89. Having agreed to fix or stabilize prices in New York and other states where they
29 overtly meet to promulgate rates, these same defendants then set out to do the same in other
30 states.

31 90. In other words, as a direct result of these meetings where rates were agreed to,
32 these same defendants agreed, either expressly or tacitly, to no compete on rates in other states as
33 well. To compete on rates in other states could and would imperil their ability to maintain the
34 rates they had agreed to.

1 agreed rate in states like New York.

2 91. As is the case in New York, a lack of regulatory authority over rates created an
 3 environment in which a conspiracy can and did succeed. No agency was examining why all the
 4 rates were virtually identical, and no agency was examining whether the costs associated with
 5 these premiums were reasonable. This is an environment which is conducive to price fixing,

6 92. In California, there is a lack of regulatory authority and oversight over title
 7 insurance companies. The rates in California are not set as part of a deliberate state intervention
 8 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue
 9 in this case went into effect without review.

10 **F. Other Indicators of a Lack of Competition and Conditions Conducive to
 11 Co-lusive Rate Setting**

12 93. In addition to the uniformity of rates, other facts suggest that it is more plausible
 13 than not that rates have been set based on an agreement to fix prices.

14 94. In theory, the chain of title should be documented back to its historic grant of
 15 ownership centuries in the past. Fear about a possible title defect in the distant past is widely
 16 used as a justification by title agencies when convincing property buyers to purchase an owner
 17 policy in addition to the lender policy, which is mandatory to secure a mortgage. The title
 18 agency, however, saves much time and money when the search is limited to one or two
 19 transactions. They rely on the insurance policy to cover the remote chance of missing an earlier
 20 but still-valid claim. If such a claim is asserted and survives the scrutiny of the title insurance
 21 company's legal department, the expected costs of compensation is likely to be less than the sum
 22 of added overhead costs of routinely tracing back every chain of title to the earliest registered
 23 owner in the distant past.

24 95. Title insurance industry officials tend to justify the large proportion of the
 25 premium retained by the title abstract and settlement agency (from 60 to more than 90 percent)
 26 by the alleged high costs of title searching back into the distant past. In fact, a high proportion of
 27 noncommercial properties are searched only through the most recent transaction. No information
 28 is available as to what proportions of claims originate in the distant past. The industry has never

1 published pertinent statistics. It would have a marketing incentive to publish these statistics if the
2 risk were significant; that is has not published these statistics indicates that the risk probably is
3 only slightly greater than zero.

4 96. Many U.S. homes are being resold three or four times in twenty-five years. At
5 each of these occasions, an abstract of title will be prepared on the basis of a more or less than
6 thorough review of the available title records, inheritance records, family records and records of
7 past or current liens against a property. It is reasonable, therefore, to suspect that the risk of a
8 title defect will decrease every time a property is sold.

9 97. Title searches have become less labor intensive, especially in large urban counties
10 and cities. More and more of the information is available online. The statistical likelihood that a
11 title default would be overlooked is a closely held industry secret, but it appears to be so small
12 that many transactions that occurred during the last twenty-five to thirty-five years. The evidence
13 is strong that the title insurance industry has achieved a remarkable high level of loss
14 minimization.

15 98. Thus the costs of production have decreased as has the risk of loss yet none of
16 these factors has resulted in price competition at the consumer level.

17 99. There is a remarkable absence of rate changes by title insurers over the past five
18 years, despite the declining costs of production, increased number of transactions and increased
19 revenue per transaction. During a period when costs per unit of production declined
20 significantly, underwritten title companies and title insurers maintained excessive rates. The
21 prices charged by title insurers and underwritten title companies were not and are not responsive
22 to the changing costs of production or increasing revenue per transaction at a given set of rates.
23 Again, this is indicia of an agreement not to compete based on price.

24 100. As noted, the title companies engage in illegal rebates and kickbacks where the
25 title insurer or the underwritten title company provides money, free services or other things of
26 value to a real estate agent, a lender or homebuilder in exchange for business referrals. These
27 illegal rebates and kickbacks - a consequence of reverse competition - show that title insurance
28 rates are supra competitive and that some portion of the overcharge is passed from the

1 underwritten title company or title insurer to the referrer of business.

2 101. A lack of competition and the ability to control prices is enhanced by the fact that
3 there were few title insurer entrants over the period from 1995 through 2005 and the number of
4 title insurer groups declined as title insurers acquired other title insurers. There were few
5 underwritten title company entrants over the 2000 to 2005 period and new entrants were
6 controlled business arrangements whose addition to the market did not result in greater price
7 competition.

8 102. Access to title plants can be a barrier to entry, but the large barrier to entry exits
9 due to the established relationships between the entities that can steer the consumer's title and
10 escrow business and the entities who sell title insurance and escrow services.

11 103. The title insurance market is highly concentrated - a few title insurers account for
12 the vast majority of title insurance sales - at both the statewide level and at the county level in
13 California. For example, three title insurer groups account for 77.4% of the market at a statewide
14 level. At the county level, each individual market was highly concentrated. The GAO found that
15 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the
16 ability of companies to fix prices.

17 104. The agreement not to compete based on price is also evidenced by the fact that no
18 company has marketed its services to consumers, the ultimate purchasers of the product. This is
19 in marked contrast to real insurance, for example, car insurance, where companies compete
20 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor" or
21 Allstate's "good hands" or the cute (to some) GEICO gecko promising low prices.

VIII. CLAIMS FOR RELIEF

COUNT I

Violation of the Sherman Act

24 Plaintiff incorporates by reference the preceding allegations.
25

25 105. Plaintiff incorporates by reference ¶¶ 1
26 106. Beginning at least as early as February 2004, and continuing thereafter to the
27 present, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged
28 in a combination of conspiracy in unreasonable restraint of the aforesaid interstate trade and

1 commerce in violation of Section 1 of the Sherman Act.

2 107. The aforesaid combination and conspiracy has consisted of a continuing
3 agreement, understanding and concert of action among the defendants and their co-conspirators,
4 the substantial terms of which have been:

5 (a) to fix, raise, maintain and stabilize the price of title insurance throughout
6 California;

7 (b) to fix, raise, maintain and stabilize the terms and conditions of the sale of
8 title insurance throughout California; and

9 (c) to allocate and divide the market for title insurance in California.

10 108. In the absence of proper regulatory authority and oversight, defendants' conduct
11 constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to
12 allocated and divides the title insurance market in California and is *per se* violation of section I of
13 the Sherman Act.

14 109. Defendants' price-fixing, market allocation and division activity has been
15 continuous throughout the relevant damages period and has been renewed and reinforced
16 annually through submissions to the OIC of supposed costs and revenue information and its
17 periodic submissions of rate changes.

18 110. Through their collective price-fixing, market allocation and division and
19 manipulation of the regulatory process, defendants have harmed competition by charging
20 consumers supra competitive prices for title insurance in California, evidenced in part by the fact
21 that the prices are uniformly higher than compared with the cost of providing the insurance.

22 111. The aforesaid combination and conspiracy has had the following effects among
23 others:

24 (a) price competition in the sale of title insurance has been suppressed,
25 restrained and eliminated;

26 (b) prices for title insurance have been raised, fixed, maintained and stabilized
27 at artificially high and non-competitive levels; and

28 (c) purchasers of title insurance have been deprived of the benefit of free and

open competition.

112. During the period of the antitrust violation by defendants and their co-conspirators, plaintiff and each member of the class she represents, has purchased title insurance and, by reason of the antitrust violations herein alleged, paid more for such that it would have paid in the absence of said antitrust violations. As a result, plaintiff and each member of the class she represents, has been injured and damaged in an amount presently undetermined.

COUNT II

Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.*

113. Plaintiff incorporates by reference the preceding allegations.

10 114. Defendants conduct as set forth above is in violation of the Cartwright Act of
11 California (Cal. Bus. and Prof. Code §§ 16720, *et seq.*)

115. As a direct result of defendants' unlawful acts plaintiffs have paid artificially
inflated prices for title insurance and have suffered injury to their business and property.

COUNT III

(Cal. Bus. and Prof. Code §§ 17200, et seq.)

16 116. The preceding paragraphs of this Complaint are realigned and incorporated by
17 reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§
18 17200, *et seq.*, on behalf of herself and the members of the class.

19 117. Defendants' statements and representations constitute unfair, unlawful and
20 deceptive trade practices in violation of the UCL.

21 118. All of the wrongful conduct alleged herein occurs and continues to occur in the
22 conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or
23 generalized course of conduct that is repeated in the State of California on hundreds, if not
24 thousands, of occasions daily.

25 119. Plaintiff has suffered injury in fact and has lost money or property as a result of
26 defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title
27 insurance than she would or should have absent the conduct complained of.

28 120 Plaintiff requests that this court enter such orders or judgment as may be necessary

1 to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to
2 restore to any person in interest any money which may have been acquired by means of such
3 unfair competition and to disgorge any profits realized by defendants as a result of its unfair,
4 unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ.
5 Code § 3345, and for such other relief as set forth in the Prayer for Relief.

6 **COUNT IV**

7 **UNJUST ENRICHMENT**

8 121. Plaintiff incorporates by reference the preceding allegations.
9 122. This Cause of action is pled in the alternative to all claims and/or causes of action
10 at law.

11 123. Defendant has received a benefit from plaintiff and the class members in the form
12 of the prices plaintiff and the class members paid for defendants' title insurance.

13 124. Defendants are aware of their receipt of the above-described benefit.

14 125. Defendants received the above-described benefit to the detriment of plaintiff and
15 each of the other members of the class.

16 126. Defendants continue to retain the above-described benefit to the detriment of
17 plaintiff and the class members.

18 127. As a result of defendants' unjust enrichment, plaintiff and the class members have
19 sustained damages in an amount to be determined at trial and seek full disgorgement and
20 restitution of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the
21 unlawful or wrongful conduct alleged above.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE, plaintiff demands:**

- 24 A. That the alleged combination and conspiracy among the defendants and their co-
25 conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of
26 Section 1 of the Sherman Act;
- 27 B. That the court declares the premiums charged are excessive under state law and
28 order damages;

1 C. That judgment be entered against defendants, jointly and severally, and in favor of
2 plaintiff, and each member of the class it represents, for threefold the damages determined to
3 have been sustained by plaintiff; and each member of the class it represents, together with the
4 cost of suit, including a reasonable attorneys' fee;

5 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and
6 their respective officers, directors, agents and employees, and all other persons acting or claiming
7 to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from in
8 any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid
9 combination, conspiracy, agreement, understanding or concert of action, adopting or following
10 any practice, plan, program, or design having a similar purpose or effect in restraining
11 competition; and

12 E. Such other and further relief as may appear necessary and appropriate.

JURY TRIAL DEMANDED

14 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged
15 herein.

20 Date: April 8, 2008

Respectfully submitted,

By: Donald Amamgbo
DONALD AMAMGBO
REGINALD TERRELL
Attorneys for Plaintiffs

EXHIBIT 4

ORIGINAL
 FILED
 08 JUL 14 PM 4:13
 CLERK, U.S. DISTRICT COURT
 RICHARD W. WIEKING
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

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1 Daniel C. Girard (CA Bar No. 114826); dcg@girardgibbs.com
 2 Elizabeth C. Pritzker (CA Bar No. 146267); ecp@girardgibbs.com
 3 Aaron M. Sheanin (CA Bar No. 214472) ams@girardgibbs.com
 4 Alex C. Turan (CA Bar No. 227273); act@girardgibbs.com

GIRARD GIBBS LLP

601 California Street, 14th Floor
 San Francisco, California 94104
 Telephone: (415) 981-4800
 Facsimile: (415) 981-4846

7 Attorneys for Plaintiffs

8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

CV 08

10 Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

11 RUBEN ROMERO and SARAH YAHN, on behalf of
 themselves and all others similarly situated,

12 Plaintiffs,

13 vs.

14 FIDELITY NATIONAL FINANCIAL, INC.,
 15 FIDELITY NATIONAL TITLE INSURANCE
 COMPANY, TICOR TITLE INSURANCE
 COMPANY, TICOR TITLE INSURANCE
 COMPANY OF FLORIDA, CHICAGO TITLE
 INSURANCE COMPANY, NATIONAL TITLE
 INSURANCE COMPANY OF NEW YORK, INC.,
 16 SECURITY UNION TITLE INSURANCE
 COMPANY, THE FIRST AMERICAN
 CORPORATION, FIRST AMERICAN TITLE
 INSURANCE COMPANY, UNITED GENERAL
 21 TITLE INSURANCE COMPANY, LANDAMERICA
 FINANCIAL GROUP, INC., COMMONWEALTH
 22 LAND TITLE INSURANCE COMPANY,
 LAWYERS TITLE INSURANCE CORPORATION,
 TRANSNATION TITLE INSURANCE COMPANY,
 STEWART TITLE GUARANTY COMPANY,
 STEWART TITLE INSURANCE COMPANY, OLD
 REPUBLIC NATIONAL TITLE INSURANCE
 COMPANY, and OLD REPUBLIC
 INTERNATIONAL CORPORATION,

27 Defendants.

1 Plaintiffs Ruben Romero and Sarah Yahn, on behalf of themselves and all others similarly
 2 situated, allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this antitrust action on behalf of all persons and entities who purchased
 5 title insurance in the State of California directly from the named defendants or any co-conspirator as
 6 identified in this Complaint.

7 2. Title insurance is one of the most costly items associated with a real estate purchase,
 8 aside from the purchase price of the property. In 2005, the price of title insurance for residential
 9 properties ranged from approximately \$1,010 (for a \$250,000 property) to \$1,490 (for a \$500,000).
 10 Title insurance premiums for more expensive homes and commercial properties are significantly
 11 higher.

12 3. Title insurance differs from other kinds of insurance in three respects. First, unlike
 13 automobile, life, homeowners or other forms of insurance, which protect consumers from loss
 14 resulting from an event that may occur in the future, title insurance offers protection from events that
 15 occurred in the past that may affect the title to the property. Second, unlike other forms of insurance,
 16 in which coverage may vary, most title insurance policies are based on a single set of form policies,
 17 published by the American Land Title Association, and provide substantially the same protection.
 18 Third, unlike other forms of insurance, title companies do not market their products directly to the
 19 consumers who pay for them. Instead, title insurers rely on “reverse competition” to market and sell
 20 their products. They pay commissions, kick-backs or referral fees, or provide other inducements to
 21 real estate agents, banks, lenders, builders and others involved in real estate transactions to use their
 22 insurance products as part of those transactions.

23 4. In California, the title insurance market is dominated by five companies and their
 24 affiliates or subsidiaries: Fidelity National Financial, Inc., First American Corporation, LandAmerica
 25 Financial Group, Inc., Stewart Title Guaranty Title Company, and Old Republic National Title
 26 Insurance Company. Combined, these five affiliate groups sell about 92 percent of the title insurance
 27 policies sold in California – or roughly \$2.85 billion of the \$3.1 billion in title insurance premiums
 28 collected from California consumers in 2004.

1 5. In some of the major markets in the United States, such as New York, these same title
 2 insurers collectively meet, jointly set rates, and file these rates with the applicable state insurance
 3 authority. The rates are not subject to any meaningful review or regulation, however. Moreover, the
 4 companies agree to fix the price of title insurance at levels that include commissions, kick-backs and
 5 other inducements paid to middlemen to steer business referrals to these companies. These agreed-
 6 upon rates far exceed the risk and loss experience associated with title insurance. As a result of their
 7 joint rate setting agreement, no company competes on price to the consumer.

8 6. Having agreed to fix prices in states where joint rate setting occurs, the five groups of
 9 affiliated companies agreed not to compete based on price to the consumer in other states, including
 10 California, where regulation of filed rates is non-existent. The result of this arrangement in California
 11 is that these companies have agreed to compete by offering inducements to middlemen for business
 12 referrals and thereby have fixed the rates of title insurance premiums at supra competitive levels.

13 7. These agreements and activities by five affiliate groups of title insurers, combined with
 14 their market dominance in the State, have enabled these companies to maintain the price of title
 15 insurance in California at artificially high levels. California regulators have acknowledged the harm
 16 these agreements and this anti-competitive conduct have caused consumers during the Class Period.

17 8. In 2005, for example, the California Office of the Insurance Commissioner found an
 18 “astonishing number” of kickbacks and similar inducements by title insurers to middlemen in
 19 violation of state law. A report to the California Insurance Commissioner prepared that same year by
 20 Birny Birnbaum, a consulting economist, also found “numerous examples in California of illegal
 21 rebates and kickbacks where the title insurer or the underwritten title company provides money, free
 22 services or other things of value to a real estate agent, a lender or homebuilder in exchange for
 23 business referrals.” (*An Analysis of Competition in the California Title Insurance and Escrow*
 24 *Industry*, December 2005, p.3) Similar findings by California Insurance Commissioner, Steve
 25 Poizner, led to a February 2007 statement in which the Commissioner declared that “reasonable price
 26 competition does not exist for title and escrow services” in California. (*Insurance Commissioner*
 27 *Steve Poisner Issues Statement Following Decision by OAL in New Regulations, California*
 28 *Department of Insurance*, February 22, 2007.)

1 9. The California Insurance Commissioner does not actively oversee or regulate rates,
 2 however, and does not have the power to do so. The absence of regulation by the California Insurance
 3 Commissioner has allowed collusive behavior among the five affiliate groups that dominate the
 4 market, as described herein, resulting in excessive rates for title insurance premiums in California.

5 10. As a result of defendants' unlawful conduct, plaintiffs and members of the Class paid
 6 higher prices for title insurance than they would have paid in a competitive market.

JURISDICTION AND VENUE

8 11. Plaintiffs bring this action to obtain injunctive relief and to recover damages, including
 9 treble damages, costs of suit, and reasonable attorneys' fees arising from defendants' violations of
 10 Section 1 of the Sherman Act (15 U.S.C. § 1). Plaintiffs also bring this action under the California
 11 Cartwright Act (Business and Professions Code § 16720 *et seq.*), and the California Unfair
 12 Competition Law (Business and Professions Code § 17200 *et seq.*).

13 12. This Court has jurisdiction over this action pursuant to Sections 4 and 16 of the
 14 Clayton Act (15 U.S.C. §§ 15 and 26) and 28 U.S.C. §§ 1331, 1332(d) and 1337(a). This Court also
 15 has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337.

16 13. Venue is proper in this judicial district pursuant to Section 12 of the Clayton Act (15
 17 U.S.C. § 22) and 28 U.S.C. § 1391(b), (c) and (d), because a substantial part of the events giving rise
 18 to the plaintiffs' claims occurred in this District, a substantial portion of the affected interstate trade
 19 and commerce was carried out in this District, and one or more defendants transact business, maintain
 20 offices or are found in this District.

PARTIES

Plaintiffs

23 14. Plaintiffs Ruben Romero and Sarah Yahn, a married couple, are individuals residing in
 24 California. During the Class Period, plaintiffs Romero and Yahn purchased title insurance in
 25 California directly from one or more of the defendants and have been injured by reason of the antitrust
 26 violations alleged.

1 Defendants

2 A. **Fidelity Family of Title Companies**

3 15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware
 4 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National
 5 does business in California through one or more of its subsidiaries, including defendants Fidelity
 6 National Title Insurance Company, Ticor Title Insurance Company, Ticor Title Insurance Company of
 7 Florida, National Title Insurance of New York, Inc., Security Union Title Insurance Company, and
 8 Chicago Title insurance Company. Fidelity National is registered to do business in California.

9 16. Defendant Fidelity National Title insurance Company ("Fidelity Title") is a California
 10 corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida
 11 32204. Fidelity Title does business in California, is a licensed title insurance company in California,
 12 and is registered to do business in California.

13 17. Defendant Ticor Title Insurance Company ("Ticor") is a California corporation with its
 14 principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204. Ticor does
 15 business in California, is a licensed title insurance company in California, and is registered to do
 16 business in California.

17 18. Defendant Ticor Title Insurance Company of Florida ("Ticor Florida") is a Florida
 18 corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida
 19 32204. Ticor Florida does business in California, is a licensed title insurance company in California,
 20 and is registered to do business in California.

21 19. Defendant Chicago Title insurance Company ("Chicago Title") is a Missouri
 22 corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida
 23 32204. Chicago Title does business in California, is a licensed title insurance company in California,
 24 and is registered to do business in California.

25 20. Defendant National Title Insurance of New York, Inc. ("National Title") is a New
 26 York corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville,
 27 Florida 32204. National Title does business in California, is a licensed title insurance company in
 28 California, and is registered to do business in California.

1 21. Defendant Security Union Title Insurance Company (“Security Union”) is a California
 2 corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida
 3 32204. Security Union does business in California, is a licensed title insurance company in
 4 California, and is registered to do business in California.

5 22. The Fidelity family of title insurance companies (collectively “Fidelity”) including
 6 Fidelity National, Fidelity Title, Ticor, Ticor Florida, Chicago Title, National Title, Security Union,
 7 and their affiliates, sells title insurance to purchasers of commercial and residential real estate
 8 throughout the United States, including California. Nationally, Fidelity accounts for approximately 27
 9 percent of title premiums. These sales amounted to approximately \$4.6 billion in 2006. Fidelity,
 10 Chicago Title, and Ticor also were founding members of the New York rate-setting organization
 11 known as TIRSA (discussed below), and have collectively fixed title insurance rates in the State of
 12 New York under that rate setting regime since TIRSA’s inception in 1991.

13 23. Fidelity and its affiliates are wholly-owned and controlled by Fidelity National.
 14 Through its subsidiaries, Fidelity National is a provider of title insurance, specialty insurance, and
 15 claims management services. During 2006, Fidelity National had revenues of approximately \$9.4
 16 billion. Fidelity engaged in the conduct challenged here with the approval of Fidelity National.

17 **B. The First American Family of Title Companies**

18 24. Defendant The First American Corporation (“First American Corp.”) is a California
 19 corporation with its headquarters located at 1st American Way, Santa Ana, California 92707. First
 20 American does business in California through one or more of its subsidiaries, including First
 21 American Title Insurance Company.

22 25. Defendant First American Title Insurance Company (“First American Title”) is a
 23 California corporation with its headquarters at First American Way, Santa Ana, California 92707.
 24 First American Title does business in California, is a licensed title insurance company in California,
 25 and is registered to do business in California.

26 26. Defendant United General Title Insurance Company (“United General”) is a Colorado
 27 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, Colorado 80112. United
 28

1 General does business in California, is a licensed title insurance company in California, and is
 2 registered to do business in California.

3 27. The First American family of title insurance companies (collectively "First
 4 American"), including defendants First American, First American Title, United General, and their
 5 affiliates, sells title insurance to purchasers of commercial and residential real estate throughout the
 6 United States, including California. Nationally, First American accounts for approximately 29 percent
 7 of title premiums. These sales amounted to approximately \$4.8 billion in 2006.

8 28. The First American family of title insurance companies and their affiliates are wholly-
 9 owned and controlled by First American Corp. Through its subsidiaries, First American is a provider
 10 of title insurance, business information, and related products and services. During 2006, First
 11 American had revenues of approximately \$8.5 billion. The First American family of title insurance
 12 companies and their affiliates engaged in the conduct challenged here with the approval of First
 13 American Corp.

14 **C. LandAmerica Family of Title Companies**

15 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia
 16 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does
 17 business in California through one or more of its subsidiaries, including Commonwealth Land Title
 18 Insurance Company, Lawyers Title Insurance Corporation, and Transnation Title insurance Company.

19 30. Defendant Commonwealth Land Title Insurance Company ("Commonwealth") is a
 20 Pennsylvania corporation with its principal place of business located at 5600 Cox Road, Glen Allen,
 21 Virginia 23060. Commonwealth does business in California, is a licensed title insurance company in
 22 California, and is registered to do business in California.

23 31. Defendant Lawyers Title Insurance Corporation ("Lawyers Title") is a Nebraska
 24 corporation with its principal place of business located at 5600 Cox Road, Glen Allen, Virginia 23060.
 25 Lawyers Title does business in California, is a licensed title insurance company in California, and is
 26 registered to do business in California.

27 32. Defendant Transnation Title Insurance Company ("Transnation") is a Nebraska
 28 corporation with its principal place of business located at 5600 Cox Road, Glen Allen, Virginia 23060.

1 Transnation does business in California, is a licensed title insurance company in California, and is
 2 registered to do business in California.

3 33. The LandAmerica family of title insurance companies (collectively "LandAmerica"),
 4 including defendants LandAmerica, Commonwealth, Lawyers Title, Transnation, and their affiliates,
 5 is engaged in selling title insurance to purchasers of commercial and residential real estate throughout
 6 the United States, including California. Nationally, LandAmerica accounts for approximately 19
 7 percent of title premiums. These sales amounted to approximately \$3.15 billion in 2006.

8 34. The LandAmerica family of title insurance companies and their affiliates are wholly-
 9 owned and controlled by defendant LandAmerica Financial Group, Inc. Through its subsidiaries,
 10 LandAmerica is a provider of title insurance and other products and services that facilitate the
 11 purchase, sale, transfer, and financing of residential and commercial real estate. During 2006,
 12 LandAmerica had revenues of approximately \$4 billion. The LandAmerica family of title insurance
 13 companies and their affiliates engaged in the conduct challenged here with the approval of
 14 LandAmerica.

15 **D. Stewart Family of Title Companies**

16 35. Defendant Stewart Title Guaranty Company ("Stewart Guaranty") is a Texas
 17 corporation headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. Stewart
 18 Guaranty does business in California, is a licensed title insurance company in California, and is
 19 registered to do business in California.

20 36. Defendant Stewart Title insurance Company ("Stewart Title") is a New York
 21 corporation with its principal place of business located at 300 E. 42nd Street, Floor 10, New York,
 22 New York 10017. Stewart Title does business in California, is a licensed title insurance company in
 23 California, and is registered to do business in California.

24 37. The Stewart family of title insurance companies (collectively "Stewart"), including
 25 defendants Stewart Guaranty, Stewart Title, and their affiliates, sells title insurance to purchasers of
 26 commercial and residential real estate throughout the United States and California. Nationally,
 27 Stewart accounts for approximately 12 percent of title premiums. These sales amount to
 28 approximately \$2 billion in 2006.

1 **E. Old Republic Family of Title Companies**

2 38. Old Republic National Title Insurance Company (“Old Republic”) is a Delaware
 3 corporation with its principle place of business located at 400 Second Avenue South, Minneapolis,
 4 Minnesota 55401. Old Republic sells title insurance to purchasers of commercial and residential real
 5 estate throughout the United States, including California, and is a licensed title insurance company in
 6 California and is registered to do business in California. Nationally, Old Republic accounts for
 7 approximately 6 percent of title premiums that, in 2006, amount to roughly \$1 billion.

8 39. Old Republic and its affiliates are wholly owned and/or controlled by defendant Old
 9 Republic International Corporation (“Old Republic International”), a Delaware corporation
 10 headquartered in Chicago, Illinois. Through its subsidiaries, Old Republic International is a provider
 11 of title insurance, general insurance, mortgage guaranty insurance, and life and health insurance. Old
 12 Republic international had 2006 revenues of approximately \$3.8 billion. Old Republic engaged in the
 13 conduct alleged here with the approval of Old Republic International.

14 40. Together, defendants account for more than 90 percent of the market for title insurance
 15 premiums consumers pay in California. Defendants account for more than 85 percent of the national
 16 market for title insurance premiums. In 2006, those sales amounted to approximately \$14.5 billion.

17 **AGENTS AND CO-CONSPIRATORS**

18 41. The acts alleged against the defendants in this Complaint were authorized, ordered, or
 19 done by their officers, agents, employees or representatives, while actively engaged in the
 20 management or operation of defendants’ business or affairs.

21 42. Various other persons, firms or corporations not named as defendants may have
 22 participated as co-conspirators with the named defendants in the violations alleged herein and may
 23 have performed acts and made statements in furtherance thereof.

24 43. Each defendant acted as the principal, agent or joint venturer of, or for, other
 25 defendants with respect to the acts, violations and common course of conduct alleged by plaintiffs.

26 **CLASS ACTION ALLEGATIONS**

27 44. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to
 28 Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of the following Class:

1 **All persons or entities who purchased title insurance in California
2 directly from the defendants, their subsidiaries, agents and/or
3 affiliates, or any co-conspirator, from the earliest date allowable by
4 law through the present (the "Class Period").**

5 **Specifically excluded from this Class are the defendants; the officers,
6 directors or employees of any defendant; any entity in which any
7 defendant has a controlling interest; and any affiliate, legal
8 representative, heir or assign of any defendant. Also excluded are any
9 federal, state or local governmental entities, any judicial officer
10 presiding over this action and the members of his/her immediate
11 family and judicial staff, and any juror assigned to this action.**

12 45. This action has been brought and may properly be maintained on behalf of the Class
13 proposed above under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

14 46. **Numerosity.** Members of the Class are so numerous that their individual joinder is
15 impracticable. It is estimated that the Class consists of thousands of members.

16 47. **Existence and predominance of common questions.** Common questions of law and
17 fact exist as to all members of the Class and predominate over questions affecting only individual
18 Class members. These common questions include:

- 19 a. Whether defendants engaged in a contract, combination or conspiracy among
20 themselves and/or their co-conspirators to raise, fix, and maintain the prices of
21 title insurance sold in California;
- 22 b. The identities of the co-conspirators;
- 23 c. The duration of the conspiracy and nature and character of the acts done in
24 furtherance of the conspiracy;
- 25 d. Whether the conspiracy violated Section 1 of the Sherman Act;
- 26 e. Whether defendants actively concealed the contract, combination or conspiracy
27 from plaintiff and other Class members;
- 28 f. Whether the conduct of defendants and their co-conspirators caused prices of
title insurance premiums to be artificially inflated to non-competitive levels;
and
- g. Whether plaintiffs and other members of the Class were injured by the conduct
of defendants and their co-conspirators and, if so, the appropriate class-wide
measure of damages and appropriate injunctive relief.

1 48. Typicality. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs
 2 bought title insurance from one of the defendants and, like all Class members, were damaged by the
 3 wrongful conduct of defendants and their co-conspirators, and seek relief common to the Class.

4 49. Adequacy. Plaintiffs are adequate representatives of the Class because their interests
 5 do not conflict with the interests of the members of the Class they seek to represent. Plaintiffs have
 6 retained counsel competent and experienced in complex class action litigation, and intend to prosecute
 7 this action vigorously. The interests of the members of the Class will be fairly and adequately
 8 protected by Plaintiffs and their counsel.

9 50. Superiority. A class action is superior to all other available methods for the fair and
 10 efficient adjudication of this controversy because joinder of all members is impracticable.
 11 Furthermore, as the damages suffered by individual Class members may be relatively small, the
 12 expense and burden of individual litigation makes it impossible for members of the Class to
 13 individually redress the wrongs done to them. There will be no difficulty in the management of this
 14 case as a class action.

15 51. In the alternative, the Class may be certified because:

- 16 a. The prosecution of separate actions by the individual members of the Class
 17 would create a risk of inconsistent or varying adjudications with respect to
 18 individual Class members and would establish incompatible standards of
 19 conduct for defendants;
- 20 b. The prosecution of separate actions by individual Class members would create
 21 a risk of adjudications with respect to them that would, as a practical matter, be
 22 dispositive of the interests of other Class members not parties to the
 23 adjudications, or substantially impair or impede the ability of other Class
 24 members to protect their interests; and
- 25 c. Defendants have acted or refused to act on grounds generally applicable to the
 26 Class, making final injunctive relief or corresponding declaratory relief with
 27 respect to the members of the Class as a whole an appropriate form of relief.

1 52. Plaintiffs reserve the right to expand, modify, or alter the class definition in response to
2 information learned during discovery.

TRADE AND COMMERCE

4 53. During the Class Period, defendants were the major sellers of title insurance in the
5 United States and California. Defendants controlled in excess of 85 percent of the market for title
6 insurance in the United States and approximately 92 percent of the statewide market in California.

7 54. During the Class Period, defendants sold substantial quantities of title insurance in a
8 continuous and uninterrupted flow of interstate commerce, including through and into this judicial
9 district.

10 55. During the Class Period, Class members located outside of and within California
11 purchased commercial or residential property and title insurance within California.

12 56. The activities of defendants and their co-conspirators, as described here substantially
13 affected interstate trade and commerce in the United States, and in the State of California, and caused
14 antitrust injury in the United States and in California.

FACTUAL ALLEGATIONS

16 57. Defendants are competitors in the sale of title insurance to consumers throughout the
17 United States, including California. They agreed and engaged in concerted efforts to (i) collectively
18 set and charge supra-competitive rates for title insurance; (ii) include agency commission costs in their
19 calculated rates; (iii) embed within these costs payoffs, kickbacks, and other charges that are unrelated
20 to the issuance of title insurance; and (iv) hide these supposed “costs” from regulatory scrutiny by
21 funneling them to and through title agents over which the government agencies have no ability or
22 authority to regulate.

23 | I. The Nature of Title Insurance

24 58. Title insurance differs from other, more familiar kinds of insurance. Unlike automobile
25 and homeowner insurance policies that protect consumers from events that may occur in the future,
26 title insurance offers protection from events that might have occurred in the past and may affect the
27 title to the real estate that a consumer is buying.

1 59. Title insurance, therefore, protects the purchaser of a property from unidentified defects
 2 in the title that would interfere with the full ownership and use of the property and the ultimate right to
 3 resell the property. Possible title defects include errors or omissions in deeds, mistakes in examining
 4 records, forgery, undisclosed heirs, missing heirs, liens for unpaid taxes, and liens by contractors.

5 60. There are two basic types of title insurance policies – the lender's policy and the
 6 owner's policy. The lender's policy is issued to the lender and will pay the lender the remaining
 7 principal on the loan if there is a title problem that cannot be resolved. The owner's policy is issued to
 8 the buyer of the property for the full purchase price of the property. Consequently, the maximum
 9 liability on a title insurance policy is the purchase price of the property.

10 61. In a typical home purchase, both a lender's policy and an owner's policy are issued.
 11 Lenders require a lender's policy whenever there is a loan associated with the real estate transaction.
 12 The lender's policy continues in force until the loan is extinguished, and the owner's policy continues
 13 until the property is sold.

14 62. With a refinancing transaction, the existing lender's policy is terminated and a new
 15 lender's policy is issued. The existing owner's policy remains in place. The lender does not pay for
 16 the lender's policy in a purchase or refinancing transaction. The premium may be paid by the buyer or
 17 seller in a purchase transaction, and by the owner in a refinancing transaction.

18 63. Title insurers do not compete on the basis of the policies or coverage that they provide.
 19 In fact, almost all title policies are based on a single set of form policies published and maintained by
 20 the American Land Title Association, the title insurance industry's national trade association.
 21 Moreover, the end goal of an exhaustive title search by a title insurer is not to provide coverage for
 22 title defects that the search uncovers, but rather to exclude coverage for any such defects and,
 23 therefore, further reduce the real value of the title policy that is written to cover only unknown defects
 24 in the title at the time of issuance. As a result, title insurance is a homogenous, commodity product.
 25 There is no substantive, if any, difference between a policy offered by one company in comparison to
 26 a policy offered by another company for the same property transaction.

27 64. Title insurance is one of the most costly items associated with the closing of a real
 28 estate transaction, aside from the purchase price of the property. In California, rates for title insurance

1 are based on a percentage of the total value of the property being insured. For residential properties,
 2 this price ranged in 2005 from about \$1,010 (for a \$250,000 property) to about \$1,490 (for a \$500,000
 3 property). For more expensive homes and commercial properties, these prices are significantly
 4 higher. The amount consumers spent on title insurance in California rose dramatically from
 5 approximately \$700 million in 1995 to about \$3.1 billion in 2004.

6 65. Title insurance companies recognize that consumers generally lack the means to make
 7 independent decisions regarding the scope, terms and price of title insurance. Title insurance referrals
 8 are typically made by lawyers, mortgage brokers, lenders, realtors or other professionals who take part
 9 in the transaction, and the cost of title insurance premium is presented to the consumer in the closing
 10 statement at the time of closing. Typically, consumers do not shop around or negotiate the price for
 11 title insurance. As a result of these dynamics, the supply and demand principles that would apply in a
 12 competitive market are not implicated, and the title insurance industry is not subject to any meaningful
 13 competitive constraints.

14 66. The title insurance market in California is dominated by five groups of affiliated
 15 companies, that when combined, sell approximately 92 percent of the title insurance policies sold in
 16 California, and that own and control the "title plants" in many California counties that every title
 17 insurer must rely on to issue title policies. "Title plants" contain information regarding property
 18 transfers and liens reaching back many years.

19 67. Title companies, in marked contrast to property, casualty, life, and other traditional
 20 insurance carriers, choose not to market their products directly to consumers who pay for them.
 21 Instead, the title insurance industry operates on what is termed a "reverse competition" model.
 22 Reverse competition means that title companies solicit business referrals from the other major players
 23 in the home purchase scenario – real estate agents and agencies, banks, lenders, builders, developers,
 24 and others such as middlemen or go-betweens. The title companies pay middlemen for these referrals
 25 in the form of direct payments, advertising expenses, junkets, parties, and other kickbacks and
 26 inducements. In addition, middlemen such as Windermere, John L. Scott, and Coldwell Banker-Bain,
 27 who themselves control a substantial portion of the real estate brokerage market, take significant
 28 ownership stakes in local title agencies and affiliates of the major title insurers. These middlemen

1 then profit by receiving a direct monetary return from the referral of title business to the title agent in
 2 which they maintain an ownership interest.

3 68. Reverse competition does not benefit consumers through market-driven forces.
 4 Instead, companies spend much of their marketing budgets entertaining real estate agents, banks,
 5 lenders, builders, developers, and others in an effort to convince these middlemen to steer the home-
 6 buying clients to their companies for the clients' title insurance needs.

7 69. Rather than seek to capture business by offering lower prices, title insurers offer
 8 kickbacks in the form of finder's fees, gifts, meals, business services, and other financial enticements.
 9 As a result, title insurers compete and increase their business through higher pricing (that allows for
 10 generous inducements and kickbacks) not lower pricing to consumers.

11 70. In some of the major markets in the United States, these same title insurers collectively
 12 meet, jointly set rates, and file these rates with the applicable state insurance authority. The rates are
 13 not subject to any meaningful review or regulation. The companies agree to fix the price of title
 14 insurance far in excess of the risk and loss experience associated with such insurance. As a result of
 15 the joint agreement as to rates, competition is relegated to the middleman, and therefore, no title
 16 company competes on price to the consumer.

17 71. In addition to paying inducements and kickbacks, the title insurance companies and
 18 their agents divide the market of real-estate middlemen through the use of Affiliated Business
 19 Arrangements ("ABAs"), where the dominant real estate brokers purchase significant ownership
 20 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for
 21 using the preferred title insurance providers and lock out independent title insurers.

22 72. Having agreed to fix prices in states where joint rate-setting occurs, the companies
 23 agreed not to compete based on price to the consumer in other states, including California, where
 24 regulation of filed rates is lax or non-existent. Thus, title insurance companies agree to set prices at
 25 supra-competitive levels and to compete based on offering inducements to middlemen.

26 73. One example of competing based on illegal kickbacks to middlemen came to light in
 27 July 2005, when nine major title companies reached an agreement with the California Department of
 28 Insurance to pay \$37.8 million in refunds and penalties for illegal rebating where national

1 homebuilders, lenders, and realtors were encouraged to steer business to particular title insurers. The
 2 nine companies were members of three insurance groups, all three of which are defendants here –
 3 LandAmerica Financial Corporation, The First American Title Insurance Company, and Fidelity
 4 National Financial, Inc.

5 74. Under the arrangement, the homebuilder formed a reinsurance company affiliate – a
 6 captive reinsurer. Then, under an agreement with the title insurer, the homebuilder would steer the
 7 consumer to the title insurer and the title insurer would cede a portion of the premium – typically 50%
 8 after the first \$200 to \$300 – to the captive reinsurer with no substantive risk of loss associated with
 9 the reinsurance transaction. In effect, the arrangement allowed for the title insurer to rebate 50% of
 10 the premium to the homebuilder.

11 75. As a result of this scheme, the companies were accused of paying \$25.4 million in
 12 illegal kickbacks to various lenders, builders, and realtors in exchange for the referral of title insurance
 13 business. Their actions involved more than 82,000 California households that purchased or refinanced
 14 a home between 1997 and 2004.

15 76. In March 2005, the U.S. Department of Housing and Urban Development (“HUD”)
 16 determined that 80% or more of the premium paid by a consumer for title insurance frequently goes to
 17 the local title agent or lawyer who ordered the policy and may be running the closing.

18 II. Lack of Regulatory Supervision in California

19 77. In California, there is a lack of regulatory authority and oversight over title insurance
 20 companies. The rates in California are not set as part of deliberate state intervention, and the state
 21 does not meaningfully renew or approve these rates. The rates at issue in this case went into effect
 22 without review.

23 78. Although the California Office of the Insurance Commissioner (“OIC”) found an
 24 “astonishing number” of kickbacks and similar inducements in violation of state law, it does not
 25 actively oversee or regulate rates, and, does not, by its own admission, have the power to do so. The
 26 absence of regulation in California has allowed and continues to allow collusive behavior and
 27 excessive rates to flourish at the expense of the consumers.

28

1 79. In February 2007, Steve Poizner, the Insurance Commissioner of California, issued a
 2 statement concluding that "reasonable price competition does not exist for title and escrow services."
 3 (*Insurance Commissioner Steve Poizner Issues Statement Following Decision by OAL on New*
 4 *Regulations*, California Department of Insurance, February 22, 2007.)

5 80. Poizner's press release goes on to state that the costs of the illegal inducements that
 6 title companies lavish on intermediaries to obtain the homeowner's business are passed on to the
 7 homeowner. Indeed, Poizner's press release states: "As a result, over the past 10 years, even though
 8 technology has lowered the costs of title searches and document production, title and escrow charges
 9 have not come down. In fact, title insurance on the average home in California costs roughly double
 10 what it cost 10 years ago, despite the fact that [title insurance] companies' production costs have
 11 plummeted."

12 81. A report to the California Insurance Commissioner prepared during December 2005 by
 13 Birny Birnbaum, Consulting Economist, found abuses of the lack of regulatory supervision in this
 14 state. For instance, his report states: "We found numerous examples in California of illegal rebates
 15 and kickbacks where the title insurer or the underwritten title company provides money, free services
 16 or other things of value to a real estate agent, a lender or homebuilder in exchange for business
 17 referrals." (*An Analysis of Competition in the California Title Insurance and Escrow Industry*,
 18 December 2005, p.3.)

19 82. The excess money paid to title agents not only works to steer business to defendants,
 20 but also serves to boost defendants' profits through the inflated revenues they obtain to cover the
 21 agency payments, and through their ownership or management stake in many of these agencies.

22 **III. Indicators of a Lack of Competition and Conditions Conducive to Collusive Rate Setting**

23 **A. Low or Declining Title Search Costs**

24 83. The bulk of the title insurance premium goes to expenses as opposed to claim
 25 payments. Title insurers paid an average of 4.6 percent of premiums for claims and claim settlement
 26 expenses from 1995 to 2004, compared to around 80 percent of the total premium collected for
 27 property and casualty insurance. Title searches have become less labor intensive, especially in large
 28 urban counties and cities, as more of the pertinent information regarding claim of title is available

1 online. As a result, the costs of production and the risk of loss have decreased. None of these factors
 2 resulted in price competition at the consumer level, however.

3 84. Despite declining costs of production, increased number of transactions and increased
 4 revenue per transaction, there have been few rate changes by title insurers over the past five years.
 5 During a period when costs per unit of production declined, underwritten title companies and title
 6 insurers maintained excessive rates. That prices charged by title insurers and underwritten title
 7 companies were not and are not responsive to the changing costs of production or increasing revenue
 8 per transaction at a given set of rates is evidence of an agreement not to compete based on price.

9 **B. Title Premiums Include Improper Payments, Commissions and Inducements**

10 85. The defendant title companies provide illegal rebates and kickbacks where the title
 11 insurer or the underwritten title company provides money, free services, or other things of value to a
 12 real estate agent, a lender, or homebuilder in exchange for business referrals. These illegal rebates and
 13 kickbacks – a consequence of reverse competition – show that title insurance rates are supra-
 14 competitive.

15 **C. Market Dominance and Lack of Competition Based on Price to Consumer**

16 86. The volume of the California title insurance transactions is substantial. The number of
 17 residential title transactions exceeded 3 million during 2004 alone. Commercial property transactions
 18 are in addition to this volume.

19 87. The title insurance market is highly concentrated – few title insurers account for the
 20 vast majority of title insurance sales – at both the statewide level and at the county level in California.
 21 For example, the five defendant families controlled approximately 92 percent of the California title
 22 insurance market in 2005.

23 88. Defendants have maintained their market dominance and ability to control prices for
 24 title insurance in part because of the substantial barriers to entry in the market. Between 1995 and
 25 2005, the number of title insurer groups declined as title insurers acquired other title insurers. Few
 26 companies entered the title insurance business during the period from 2000 through 2005.

27 89. Access to title plants is a barrier to entry. Established relationships between entities
 28 that steer consumers to title insurance sellers is an additional barrier to entry.

1 90. As a result of their market dominance and anti-competitive practices, defendants enjoy
 2 excessive profits at the expense of the consumers. For example, title insurance underwriters earned
 3 after-tax profits of 49.0 percent in 2003 and 32.3 percent in 2004.

4 **IV. Price Fixing in Other Large Markets that Affect California**

5 91. New York is one of several states in which the leading title insurers collectively fix
 6 their prices through a rate-setting organization known as the Title Insurance Rate Service Association,
 7 Inc., or TIRSA. TIRSA collects from defendants and TIRSA's other members revenue and cost
 8 information and annually submits it in aggregate form along with collectively set title rates to the New
 9 York Insurance Department. Under this rate setting regime, defendants have charged identical and
 10 collectively fixed rates to consumers since TIRSA's inception in 1991.

11 92. The New York Insurance Department is charged with reviewing the title rates that
 12 defendants (through TIRSA) collectively fix. Defendants have made this impossible, however, by
 13 manipulating the rates so that they are principally based on costs over which the Insurance
 14 Department has neither the authority nor the ability to assess.

15 93. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title
 16 insurance premiums are based on the so-called "costs" associated with the payment of agency
 17 commissions. These costs are referred to as so-called "agency commissions." As in California, these
 18 commissions chiefly include kickbacks and other costs unrelated to the issuance of title insurance.
 19 Instead, as in California, these supposed costs are funneled to and through title agents to increase
 20 defendants' overall business and get them more business.

21 94. New York Insurance Law does not authorize TIRSA to include kickbacks and other
 22 agency commission payments that are unrelated to the issuance of title insurance in its collectively
 23 fixed rates. The New York Insurance Department has acknowledged, however, that it lacks the
 24 authority to review any agency commission payments and, therefore, cannot properly evaluate
 25 TIRSA's calculated rates.

VIOLATIONS ALLEGED

First Claim for Relief

(Violation of Section 1 of the Sherman Act)

95. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs of this complaint.

96. Beginning at a time presently unknown to Plaintiffs, but at least as early as May 2004, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

97. The combination and conspiracy consisted of a continuing agreement, understanding and concert of action among defendants and their co-conspirators, the substantial terms of which were:

- a. To fix, raise, maintain and stabilize the price of title insurance throughout California;
 - b. To fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and
 - c. To allocate and divide the market for title insurance in California.

98. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California which is a *per se* violation of Section 1 of the Sherman Act.

99. Defendants' price fixing, market allocation, and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

100. Through their collective price-fixing, market allocation and division, as well as manipulation of the regulatory process, defendants harmed competition by charging consumers supra-competitive prices for title insurance in California, evidenced by the uniformly higher prices as compared to the cost of providing the title insurance.

101. The combination and conspiracy alleged here had, among other things, the following effects:

- a. Price competition in the sale of title insurance has been restrained, suppressed, and/or eliminated;
 - b. Prices for title insurance sold by defendants and their co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels; and
 - c. Purchasers of title insurance have been deprived of the benefits of free and open competition.

102. During the period of the antitrust violations by defendants and their co-conspirators, Plaintiffs and each member of the Class they represent purchased title insurance and, by reason of the antitrust violations alleged here, paid more for such than they would have paid in the absence of the antitrust violations. As a result, Plaintiffs and members of the Class have been injured in an amount presently undetermined.

Second Claim for Relief

(Violation of the California Cartwright Act)

103. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs of this complaint.

104. Defendants' contract, combination, trust or conspiracy was centered in, carried out, effectuated and perfected mainly within California, and defendants' conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

105. Beginning at a time presently unknown to Plaintiffs, but at least as early as May 2004, defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Sections 16720, *et seq.* of the California Business and Professional Code. Defendants acted in violation of Sections 16720, *et seq.* to fix, raise, stabilize and maintain prices of, and allocate markets for title insurance at supra-competitive levels.

1 106. The violations of Sections 16720, *et seq.* of the California Business and Professions Code
2 consisted of a continuing unlawful trust and concert of action among the defendants and their co-
3 conspirators, the substantial terms of which were to fix, raise, maintain and stabilize the prices of, and to
4 allocate markets for title insurance in the state of California.

5 107. For the purpose of forming and effectuating the unlawful agreement, defendants and their
6 co-conspirators did those things which they combined and conspired to do, including the acts, practices
7 and course of conduct alleged above and the following:

- a. To fix, raise, maintain and stabilize the price of title insurance;
 - b. To allocate markets for title insurance amongst themselves; and
 - c. To allocate and divide the market for title insurance in California.

108. The combination and conspiracy alleged here had the following effects:

- a. Price competition in the sale of title insurance has been restrained, suppressed and/or eliminated in California and throughout the United States;
 - b. Price for title insurance sold by defendants and their co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels in California and throughout the United States; and
 - c. Those who purchased title insurance from defendants and their co-conspirators have been deprived of the benefit of free and open competition.

109. Plaintiffs and the other members of the Class paid supra-competitive, artificially inflated prices for title insurance.

110. As a direct and proximate result of defendants' unlawful conduct, Plaintiff and the members of the Class have been injured in their business and property because they paid more for title insurance than they otherwise would have paid in the absence of defendants' unlawful conduct.

111. As a result of defendants' violation of Sections 16720, *et seq.* of the California Business and Professions Code, Plaintiffs seek treble damages and the costs of suit, including reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business and Professions Code.

Third Claim for Relief

(Violation of the California Unfair Competition Law)

112. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs
of this complaint.

113. Defendants' business acts and practices were centered in, carried out, effectuated and perfected mainly within California, and defendant's conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

114. During the Class Period, and continuing to the present, defendants committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code, by engaging in the acts and practices specified above.

115. This Claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from defendants for acts that violated Sections 17200, *et seq.* of the California Business and Professions Code, commonly known as the Unfair Competition Law.

116. Defendants' conduct violated Section 17200. The acts, omissions, misrepresentations, practices and non-disclosures by defendants constituted a common continuous and continuing course of conduct of unfair competition by means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Sections 17200, *et seq.*, including the following:

- a. Defendants' acts and practices violate Section 1 of the Sherman Act and Section 16720, *et seq.*, of the California Business and Professions Code, set forth above;
 - b. Defendants' acts and practices are unfair to consumers of title insurance in California and throughout the United States within the

1 meaning of Section 17200 of the California Business and
2 Professions Code; and

- 3 c. Defendants' acts and practices are fraudulent or deceptive within
4 the meaning of Section 17200 of the California Business and
5 Professions Code.

6 117. Plaintiffs and each of the Class members are entitled to full restitution and/or
7 disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained
8 by defendants as a result of their illegal business acts or practices as alleged here.

9 118. The illegal conduct alleged here is continuing and there is no indication that defendants
10 will not continue such activity into the future.

11 119. The unlawful and unfair business practices of defendants, as described above, caused
12 Plaintiffs and the members of the Class to pay supra-competitive and artificially-inflated prices for title
13 insurance. Plaintiffs and the members of the Class suffered injury in fact and lost money or property as
14 a result.

15 120. Plaintiffs request that this Court enter such order or judgment as may be necessary to
16 enjoin defendants from continuing their unfair, unlawful, and/or deceptive practices, to restore to them
17 and the Class members any money that may have been unjustly acquired by defendants by means of
18 defendants' unfair competition.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs and the members of the Class pray for relief as follows:

22 A. That this action be certified and maintained as a class action under Rule 23(a) and
23 (b)(3) of the Federal Rules of Civil Procedure;

24 B. That the unlawful conduct, contract, conspiracy or combination alleged here be
25 adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of
26 the Sherman Act;

1 C. That Plaintiffs and the Class recover damages, including treble damages, and
2 restitution, as provided by federal and state antitrust and unfair competition laws, and that a joint and
3 several judgment in favor of Plaintiffs and the Class be entered against the defendants;

4 D. That defendants, their affiliates, successors, transferees, assignees, and the officers,
5 directors, partners, agents, employees, and all other persons acting or claiming to act on their behalf,
6 be permanently enjoined and restrained from in any manner: (1) continuing, maintaining, or renewing
7 the conduct, contract, conspiracy or combination alleged here; (2) entering into any other conspiracy
8 similar to the ones alleged here; (3) entering into any other contract, conspiracy or combination having
9 similar purpose or effect; and (4) adopting or following any practice, plan, program, or device having
10 a similar purpose or effect;

11 E. That Plaintiffs and the Class be awarded pre-and post-judgment interest, and that the
12 interest be awarded at the highest legal rate from and after the date of service of the initial complaint
13 in this action;

14 F. That Plaintiffs and the Class recover their costs of this suit, including reasonable
15 attorneys' fees as provided by law; and

16 G. That Plaintiffs and the Class have such other, further and different relief as the case
17 may require and the Court may deem just and proper under the circumstances.

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JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

DATED: July 14, 2008

Respectfully submitted,

GIRARD GIBBS LLP

By:

Daniel C. Girard
Elizabeth C. Pritzker
Aaron M. Sheanin
Alex C. Turan
601 California Street, 14th Floor
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

*Attorneys for Plaintiffs Ruben Romero and
Sarah Yahn*

EXHIBIT 5

1 BARRACK, RODOS & BACINE
 2 STEPHEN R. BASSER (121590)
 2 sbasser@barrack.com
 3 JOHN L. HAEUSSLER (215044)
 3 jhaeußler@barrack.com
 4 402 West Broadway, Suite 850
 4 San Diego, CA 92101
 5 Telephone: (619) 230-0800
 5 Facsimile: (619) 230-1874

6 [Additional counsel listed on signature page]

7 Attorneys for Plaintiffs

8

9

10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 LOUIS AND SILVIA MARTINEZ, on
 13 behalf of themselves and all other similarly
 14 situated,

15 Plaintiffs,
 16 vs.

17 FIDELITY NATIONAL FINANCIAL,
 18 INC., FIDELITY NATIONAL TITLE
 INSURANCE COMPANY, TICOR TITLE
 INSURANCE COMPANY, TICOR TITLE
 INSURANCE COMPANY OF FLORIDA,
 19 CHICAGO TITLE INSURANCE
 COMPANY, NATIONAL TITLE
 INSURANCE OF NEW YORK, INC.,
 SECURITY UNION TITLE INSURANCE
 COMPANY, THE FIRST AMERICAN
 CORPORATION, FIRST AMERICAN
 TITLE INSURANCE COMPANY,
 UNITED GENERAL TITLE INSURANCE
 COMPANY, LANDAMERICA
 FINANCIAL GROUP, INC.,
 COMMONWEALTH LAND TITLE
 INSURANCE COMPANY, LAWYERS
 TITLE INSURANCE CORPORATION,
 TRANSNATION TITLE INSURANCE
 COMPANY, STEWART TITLE
 GUARANTY COMPANY and STEWART
 TITLE INSURANCE COMPANY

28 Defendants.

FILED

08 MAR 18 AM 11:24

CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

BY:

CP

DEPUTY

Case No: 08 CV 0499 L WMC

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATION OF SECTION 1 OF THE SHERMAN ACT;
- 2. VIOLATION OF CAL. BUS. AND PROF. CODE § 16720, *et seq.*;
- 3. VIOLATION OF CAL. BUS. AND PROF. CODE § 17200, *et seq.*; and
- 4. UNJUST ENRICHMENT

JURY TRIAL DEMANDED

1 Plaintiffs, Louis and Silvia Martinez, by their attorneys, on behalf of themselves and all
2 others similarly situated, brings this action for treble damages and injunctive relief under the
3 antitrust laws of the United States and based on statutes of the State of California against the
4 above named defendants, demand a trial by jury, and complaining and alleging as follows:

5 **I. INTRODUCTION**

6 1. From the consumer's point of view, title insurance differs greatly from other,
7 more familiar kinds of insurance. For one thing, while automobile and homeowner insurance
8 policies protect consumers from an event that may occur in the future, title insurance offers
9 protection from events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from
11 problems that occurred in the past and may affect the title to the real estate that a consumer is
12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide.
13 In fact, almost all title policies are based on a single set of form policies published and
14 maintained by the national trade association, the American Land Title Association.
15 Furthermore, the end goal of an exhaustive title search by a title insurer is not to provide
16 coverage for title defects that the search uncovers, but rather to exclude coverage for any such
17 defects and therefore, reduce the real value of the title policy which is written to cover only
18 unknown defects in title at the time of issuance. As a result, title insurance is a commodity
19 product.

20 3. Even for the savviest of insurance consumers, the purchase of a title insurance
21 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of
22 paperwork and signings that culminate in the closing of a home purchase. Consumers who
23 normally shop around for their insurance and carefully compare prices, typically emerge from
24 the closing on their new home holding an insurance policy that they know virtually nothing
25 about and that in all likelihood, they will never need.

26 4. The title insurance market in California consists of a dozen carriers, ranging in
27 size from regional companies to national affiliates. However, the market is dominated by four
28 groups of affiliated companies which, combined, sell over 90 percent of the title insurance

1 policies sold in California and which own and control the title plants in many California
2 counties that every title insurer must rely on in order issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other
4 traditional insurance carriers, choose not to market their products directly to the consumers who
5 pay for them. Instead, the title insurance industry operates on what is termed a "reverse
6 competition" model. Reverse competition means that title companies solicit business referrals
7 from the other major players in the home purchase scenario — real estate agents and agencies,
8 banks, lenders, builders, developers and others: middlemen or go-betweens. The title
9 companies pay middlemen for these referrals in the form of direct payments, advertising
10 expenses, junkets, parties and other kick-backs and inducements. In addition, middlemen such
11 as Windermere, John L. Scott and Caldwell Bunker-Bain, who themselves control a significant
12 portion of the real estate brokerage market, take significant ownership stakes in local title agents
13 and affiliates of the major title insurers and thereby get a direct return in profit from the referral
14 of title business to the title agent whom they partly or wholly own.

15 6. Reverse competition, as the term suggests, isn't a model that benefits consumers
16 through market-driven forces. In fact, consumers are bypassed completely as title companies
17 spend nearly all of their marketing budgets "wining and dining" real estate agents, banks,
18 lenders, builders, developers and others in an effort to convince these middlemen to steer their
19 home-buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance
22 authority. The rates are not subject to any meaningful review or regulation. The companies
23 agree to fix the price of title insurance far in excess of the risk and loss experience associated
24 with such insurance. As a result of the joint agreement as to rates, competition is relegated to
25 the middleman. As a result of their joint rate setting and agreement, no company competes on
26 price to the consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the
28 companies agreed to not compete based on price to the consumer in other states, including

1 California, where regulation of filed rates is lax or non-existent. Thus, they agreed to set rates
 2 at supra competitive prices and to compete based on offering inducements to middlemen. In
 3 California, in three successive reports, the Office of the Insurance Commissioner ("OIC") has
 4 found an "astonishing number" of such inducements that are in violation of state law. However,
 5 the OIC does not actively oversee rates, and, in fact, does not by its own admission have the
 6 power to do so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their
 8 agents divide the market of real-estate middlemen through the use of Affiliated Business
 9 Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant
 10 ownership stakes in favored title insurance affiliates. The real estate brokers then reward their
 11 associates for using the preferred insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiffs, on behalf of a Class of those purchasing title insurance
 13 in California, seek damages arising from defendants' violation of the Sherman Act as well as
 14 California statutory law.

15 II. JURISDICTION AND VENUE

16 11. This Complaint is filed and these proceedings are instituted under Sections 4 and
 17 16 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to
 18 obtain injunctive relief and to recover treble damages and the costs of suit, including a
 19 reasonable attorneys' fee, against defendants for the injuries sustained by plaintiffs and the
 20 members of the Class which they represent by reason of defendants' and their co-conspirators'
 21 violations, as hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1). As such, this
 22 Court has jurisdiction pursuant to 28 U.S.C. §1331. This Court also has supplemental
 23 jurisdiction pursuant to 28 U.S.C. §1367(a).

24 12. Defendants transact business, maintain offices or are found within the Southern
 25 District of California. The interstate commerce described hereinafter is carried on, in part,
 26 within the Southern District of California, the conspiratorial acts herein alleged were carried on,
 27 in part, in the Southern District of California, and plaintiffs purchased title insurance in the
 28 Southern District of California.

1 **III. PARTIES**

2 **A. Plaintiffs**

3 13. Plaintiffs, Louis and Silvia Martinez, are individuals residing in Chula Vista,
4 California. During the Class Period, plaintiffs purchased title insurance directly from one or
5 more of the defendants herein and have been injured by reason of the antitrust violations
6 alleged.

7 **B. Defendants**

8 14. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware
9 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity
10 National does business in California through one or more of its subsidiaries, including but not
11 limited to, defendants Fidelity National Title Insurance Company, Ticor Title Insurance
12 Company, Ticor Title Insurance Company of Florida, National Title Insurance of New York,
13 Inc., Security Union Title Insurance Company, and Chicago Title Insurance Company. Fidelity
14 National is registered to do business in California.

15 15. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California
16 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida
17 32204. FNTIC does business in California, is a licensed title insurance company in California
18 and is registered to do business in California.

19 16. Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation
20 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor
21 does business in California, is a licensed title insurance company in California and is registered
22 to do business in California.

23 17. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida
24 corporation with its principle place of business at 601 Riverside Ave., Jacksonville Florida
25 32204. TTICF does business in California, is a licensed title insurance company in California
26 and is registered to do business in California.

27 18. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri
28 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida

1 32204. Chicago Title does business in California, is a licensed title insurance company in
2 California and is registered to do business in California.

3 19. Defendant National Title Insurance of New York, Inc. ("NTINY") is a New York
4 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida
5 32204. NTINY does business in California, is a licensed title insurance company in California
6 and is registered to do business in California.

7 20. Defendant Security Union Title Insurance Company ("SUTIC") is a California
8 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida
9 32204. SUTIC does business in California, is a licensed title insurance company in California
10 and is registered to do business in California.

11 21. The Fidelity family of title insurance companies (collectively, "Fidelity") —
12 which includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and
13 SUTIC, and their affiliates — is engaged in selling title insurance to purchasers of commercial
14 and residential real estate throughout the United States, including California. Nationally,
15 Fidelity accounts for approximately 27 percent of title premiums, which in 2006 amounted to
16 roughly \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA
17 (defined below) and since TIRSA's inception have charged title insurance rates in New York
18 that TIRSA collectively sets.

19 22. The Fidelity family of title insurance companies and their affiliates are wholly-
20 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,
21 Fidelity National is a provider of title insurance, specialty insurance, and claims management
22 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of
23 title insurance companies engaged in the conduct challenged herein with the approval and assent
24 of defendant Fidelity National

25 23. Defendant the First American Corporation ("First American") is a California
26 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. First
27 American does business in California through one or more of its subsidiaries, including but not
28

1 limited to, defendants First American Title Insurance Company and United General Title
2 Insurance Company.

3 24. Defendant First American Title Insurance Company ("FATIC") is a California
4 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC
5 does business in California, is a licensed title insurance company in California and is registered
6 to do business in California.

7 25. Defendant United General Title Insurance Company ("UGTIC") is a Colorado
8 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC
9 does business in California, is a licensed title insurance company in California and is registered
10 to do business in California.

11 26. The First American family of title insurance companies (collectively, "First
12 American") — which included defendants First American, FATIC and UGTIC, and their
13 affiliates — is engaged in selling title insurance to purchasers of commercial and residential real
14 estate throughout the United States, including California. Nationally, First American accounts
15 for approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8
16 billion. First American Title was a founding member of TIRSA and since TIRSA's inception
17 has charged title insurance rates in New York that TIRSA collectively sets.

18 27. The First American family of title insurance companies and their affiliates are
19 wholly-owned and controlled by defendant The First American Corporation. Through its
20 subsidiaries, First American is a provider of title insurance, business information, and related
21 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First
22 American family of title insurance companies and their affiliates engaged in the conduct
23 challenged herein with the approval and assent of defendant First American.

24 28. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia
25 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does
26 business in California through one or more of its subsidiaries, including but not limited to,
27 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance
28 Corporation and Transnation Title Insurance Company.

1 29. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a
2 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,
3 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in
4 California and is registered to do business in California.

5 30. Defendant Lawyers Title Insurance Corporation ("LTIC") is a Nebraska
6 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.
7 LTIC does business in California, is a licensed title insurance company in California and is
8 registered to do business in California.

9 31. Defendant Transnation Title Insurance Company ("TNTIC") is a Nebraska
10 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.
11 TNTIC does business in California, is a licensed title insurance company in California and is
12 registered to do business in California.

13 32. The LandAmerica family of title insurance companies (collectively
14 "LandAmerica") — which included defendants LandAmerica, CLTIC, LTIC and TNTIC, and
15 their affiliates — is engaged in selling title insurance to purchasers of commercial and
16 residential real estate throughout the United States, including California. Nationally,
17 LandAmerica accounts for approximately 19 percent of title premiums, which in 2006
18 amounted to roughly \$3.15 billion. Commonwealth and Lawyers Title were founding members
19 of TIRSA and since TIRSA's inception have charged title insurance rates in New York that
20 TIRS collectively sets.

21 33. The LandAmerica family of title insurance companies and their affiliates are
22 wholly-owned and controlled by defendant LandAmerica Financial Group, Inc. Through its
23 subsidiaries, LandAmerica is a provider of title insurance and other products and services that
24 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.
25 LandAmerica had 2006 revenues of roughly \$4 billion. The Land America family of title
26 insurance companies and their affiliates engaged in the conduct challenged herein with the
27 approval of defendant LandAmerica.

28

1 34. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation
2 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77069. STGC does business
3 in California, is a licensed title insurance company in California and is registered to do business
4 in California.

5 35. Defendant Stewart Title Insurance Company ("STIC") is a New York
6 corporation with its principle place of business at 300 E. 42nd St., Floor 10, New York, NY
7 10017. STIC does business in California, is a licensed title insurance company in California
8 and is registered to do business in California.

9 36. The Stewart family of title insurance companies (collectively, "Stewart") —
10 which includes defendants STGC and STIC, and its affiliates — is engaged in selling title
11 insurance to purchasers of commercial and residential real estate throughout the United States
12 and California. Nationally, Stewart accounts for approximately 12 percent of title premiums,
13 which in 2006 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and
14 since TIRSA's inception has charged title insurance rates in New York that TIRSA collectively
15 sets.

16 37. Together, defendants account for more than 85 percent of the title premiums
17 consumers pay in California. Nationally, they account for more than 85 percent of title
18 premiums, which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages
19 period, defendants charged California consumers in California virtually identical title insurance
20 rates.

21 **IV. OTHER ENTITIES**

22 38. TIRSA is a voluntary association of title insurers licensed as a rate service
23 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains
24 its offices in New York City, which until recently were located at the same New York address
25 of Fidelity Title.

26 39. TIRSA annually compiles from its members statistical data relating to their title
27 insurance premiums, losses and expenses and submits this information in aggregate form to the
28 New York Insurance Department. TIRSA also prepares and submits the New York Title

1 Insurance Rate Manual which sets forth title rates to be charged and rules to be followed by
2 TIRSA's members. The Insurance Department has never objected to any of the rates TIRSA has
3 collectively set. Similarly, the California OIC has not actually held a public hearing or
4 conducted any other review or regulation of the title insurance rates in California for thirty
5 years.

6 40. TIRSA's membership is comprised of defendant insurers and all other title
7 insurers that are licensed to issue policies in New York. Currently, Fidelity, First American,
8 LandAmerica, and Stewart collectively represent 14 of TIRSA's 22 members. As such, they
9 comprise a majority voting block which, according to TIRSA's by-laws, allows them to control
10 the operations of TIRSA and, in particular, TIRSA's collective rate setting activity.

11 41. Various other persons, firms and corporations not made defendants herein have
12 participated as co-conspirators with the defendants in the violations alleged herein and have
13 performed acts and made statements in furtherance thereof.

14 **V. CLASS ACTION ALLEGATIONS**

15 42. Plaintiffs bring this action under Rule 23, and particularly subsection (b)(3), of
16 the Federal Rules of Civil Procedure, on behalf of themselves and a Class consisting of all
17 persons excluding governmental entities, defendants, subsidiaries and affiliates of defendants,
18 who purchased directly, from one or more of the defendants and/or their co-conspirators title
19 insurance for residential and commercial property in California during the four year period
20 preceding this lawsuit and who have sustained damages as a result of the conspiracy herein
21 alleged. The number of potential Class members is so numerous that joinder is impracticable.

22 43. Plaintiffs, as representatives of the Class, will fairly and adequately protect the
23 interest of the Class members. The interests of plaintiffs are coincident with, and not
24 antagonistic to, those of the Class members.

25 44. Except as to amount of damages each member of the Class has by itself
26 sustained, all other questions of fact and law are common to the class, including but not limited
27 to, the combination and conspiracy hereinafter alleged, the violation of Section I of the Sherman
28 Act (15 U.S.C. § 1) and the effects of such violation.

1 45. Plaintiffs, along with all other members of the Rule (b)(3) Class, were injured as
 2 a result of paying supracompetitive prices for title insurance in California. These
 3 supracompetitive prices were achieved as a result of defendants' illegal price-fixing activities
 4 and market allocation and division.

5 46. Members of the Class include hundreds of thousands, if not millions, of
 6 consumers. They are so numerous that their joinder would be impracticable.

7 47. Plaintiffs also bring this action as a class action under Rule 23(b)(2) of the
 8 Federal Rules of Civil Procedure, for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.
 9 The Rule (b)(2) Class included all members of the (b)(3) Class, and all consumers who are
 10 threatened with injury by the anticompetitive conduct detailed herein.

11 48. Defendants have acted, continued to act, refused to act and continued to refuse to
 12 act on ground generally applicable to the Rule (b)(2) Class, thereby making appropriate final
 13 injunctive relief with respect to the Rule (b)(2) Class as a whole.

14 49. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions,
 15 of consumers. They are so numerous that their joinder would be impracticable.

16 50. Common questions of law and fact exist with respect to all Class members and
 17 predominate over any questions solely affecting individual Class members. Among the
 18 questions of law or fact common to the class are the following:

- 19 • Whether defendants have engaged in the alleged illegal price-fixing
 activity and market allocation and division.
- 20 • The duration and scope of defendants' alleged illegal price-fixing and
 market allocation and division activity.
- 21 • Whether defendants' alleged illegal price-fixing and market allocation
 and division has caused higher prices to plaintiffs and other purchasers of
 title insurance in California.
- 22 • Whether the Insurance Commissioner has actively supervised defendants'
 price fixing and market allocation and division.

23 51. Plaintiffs do not have any conflict of interest with other Class members.
 24 Plaintiffs' claims are typical of the claims of the Class and they will fairly and adequately
 25 reflect the interests of the Class. Counsel competent and experienced in federal class action and
 26 federal antitrust litigation has been retained to represent the class.

1 52. This action is superior to any other method for the fair and efficient adjudication
 2 of this legal dispute since joinder of all members is not only impracticable, but impossible. The
 3 damages suffered by certain members of the Class are small in relation to the expense and
 4 burden of individual litigation and therefore it is highly impractical for such Class members to
 5 seek redress for damages resulting from defendants' anticompetitive conduct.

6 53. There will be no extraordinary difficulty in the management of the Class action.

7 **VI. TRADE AND COMMERCE**

8 54. During all or part of the period in suit, defendants and their co-conspirators were
 9 sellers of title insurance in California.

10 55. During the period in suit, the defendants sold substantial quantities of title
 11 insurance in a continuous and uninterrupted flow of interstate commerce. In 2005, consumers
 12 in the United States paid \$17 billion for residential title insurance policies.

13 56. During the period in suit, Class members from locations outside California
 14 purchased commercial or residential property and title insurance within California.

15 57. During the period in suit, the defendants were the major sellers of title insurance
 16 in the United States and California. Defendants controlled in excess of 85 percent of the market
 17 for title insurance in the United States and California.

18 58. The activities of the defendants and their co-conspirators, as described herein,
 19 were within the flow of interstate commerce and substantially affected interstate commerce.

20 **VII. FACTUAL ALLEGATIONS**

21 A. **The Nature of Title Insurance**

22 59. Title insurance is one of the most costly items associated with the closing of a
 23 real estate transaction. In California, rates for title insurance are based on a percentage of the
 24 total value of the property being insured. For residential properties, this price ranged in 2005
 25 from about \$1,010 (for a \$250,000 property) to \$1,490 (for a \$500,000 property). For more
 26 expensive homes and commercial properties, these prices are significantly higher. The amount
 27 spent on title insurance has risen dramatically over the past decade.

28

1 60. Title insurance serves an important purpose. It protects the purchaser of a
2 property from any unidentified defects in the title that would in any way interfere with the full
3 and complete ownership and use of the property with the ultimate right to resell the property.
4 Title insurance is required by lenders in most residential and commercial real estate
5 transactions.

6 61. Consumers exercise little discretion in choosing the title insurer from which they
7 purchase the insurance. That decision is typically made for them by their lawyer, mortgage
8 brokers, lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not
9 challenged. Most consumers do not even become aware of the price they will pay and to which
10 insurer they will pay it until the actual closing of the real estate transaction. By then it's too late,
11 consumers can't attempt to negotiate a better title insurance price or alternate provider for fear of
12 delaying or derailing the entire transaction. There is no shopping around. There is no
13 negotiation of price.

14 62. This dynamic basically removes the sale of title insurance from the normal
15 competitive process and any real competitive constraints, unlike the regular forces of supply and
16 demand. The purchasers of the insurance, in most instances, are not the ones making the
17 purchasing decisions. And, they are certainly in no position to question the price.

18 63. The most effective but illegal way for a particular title insurer to get business is
19 to encourage those making the purchasing decisions — the real-estate middlemen — to steer
20 business to that insurer. The best way to so motivate the middlemen is not through lower prices
21 (that they are not even paying). Rather is it through kickbacks in the form of finder's fees, gifts,
22 meals, business serviced and other financial enticements. Therefore, it is through higher pricing
23 (which allows for generous inducements and kick-backs), not lower pricing, that provides the
24 best way for title insurers to compete and increase their business.

25 **B. Price-Fixing in the Large Markets**

26 64. New York is one of the several states in which the leading title insurers
27 collectively fix their prices through a rate-setting organization like TIRSA. There are two
28

1 principal cost components that go into TIRSA's calculation. One comprises the risk associated
2 with issuing the title policy. The other comprises the "agency commission" paid to title agents.

3 65. The risk component covers the risk the title insurer bears for any undiscovered
4 defects in the title. Unlike property insurance, title insurance carries with it a very limited risk
5 of loss to the insurer. That is because title insurance protects against unknown *prior* events that
6 cause defects in title. With a proper search and examination of prior ownership records, any
7 such defects can and almost always are readily identified and excluded from the policy's
8 coverage. Consequently, the average claim payout on a title insurance policy in the United
9 States amounts to only about 5 percent of the total premium collected. This is very different
10 from property coverage (such as auto and home insurance) — which protects against *future*
11 occurrences over which the insurer has little to no control — where the average claim payout
12 amounts to about 80 percent of the total premium.

13 66. The "agency commissions" component of the title insurance rate covers
14 payments made to title agents. Defendants have an ownership or management stake in many of
15 the title agencies to which these payments are made. A small portion of the payments is for the
16 search and exam of prior ownership records of the property being purchased to identify any
17 liens, encumbrances, burdens, exclusions, or other defects in the title. The search and exam
18 function does not involve the spreading or underwriting of risk, and title insurers typically
19 outsource this task to title agents.

20 67. The remainder, and by far the bulk, of the agency commissions are comprised of
21 costs unrelated to the issuance of title insurance. These costs include kickbacks and other
22 financial inducements title insurers provide to title agents and indirectly (through title agents) to
23 the lawyers, brokers, and lenders who, in reality, are the ones deciding which title insurer to use.
24 These payments have nothing to do with the issuance of title insurance and are made by the title
25 insurers merely to inflate their revenues and steer business their way.

26 68. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title
27 insurance premium is based on the so-called "costs" associated with the payment of agency
28 commission. Only 15 percent is based on costs associated with the risk of loss.

1 69. TIRSA publishes its final calculated title rates in the New York Title Insurance
 2 Rate Manual. These rates are tied to the value of the property being insured. This is so despite
 3 the fact that the costs associated with agency commissions are entirely unrelated to the value of
 4 the property. Indeed, agency kickbacks and enticements have little to do with producing a
 5 particular title policy and provide no value — proportional to property value or otherwise — to
 6 the consumer. Even search and exam costs are unrelated to property value. They instead
 7 depend on the age of the property, the complexity of the ownership history, and the accessibility
 8 of prior ownership records.

9 70. There are other states in which the defendants overtly met and agreed to fix the
 10 rates for title insurance as part of a formal collective rate setting process.

11 **C. TIRSA's Formation**

12 71. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served
 13 as the title insurance rate-setting body in New York. NYBTU, along with the title insurance
 14 rate setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a
 15 Federal Trade Commission ("FTC") challenge to the collective rate setting activity of many of
 16 these associations. The FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621
 17 (1992), where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate
 18 setting activity of these rating bureaus must be actively supervised by the state.

19 72. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC
 20 contended that the respective state insurance departments merely rubber-stamped this portion of
 21 the collectively fixed rates without any independent review or analysis of their reasonableness
 22 or cost justification. The Supreme Court agreed with the FTC that this kind of limited state
 23 oversight was not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance
 24 department has to "exercise[]sufficient independent judgment and control so that the details of
 25 the rates or prices have been established as a product of deliberate state intervention, not simply
 26 by agreement among private parties." *Ticor*, 504 U.S. at 634-35.

27 73. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand
 28 in *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the

1 collective rate-setting of certain state rating bureaus was improper because it was not actively
 2 supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed
 3 us that a state's rubber stamp is not enough. Active supervision requires the state regulatory
 4 authorities' independent review and approval." *Id.* at 1139.

5 74. Defendants formulated TIRSA's first rate manual and procedure soon after the
 6 Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme
 7 to get around the rigors of state oversight required by *Ticor*. They have done so by calculating a
 8 single rate that comprises both risk and agency commission costs and by outsourcing to title
 9 agents the agency commission costs. In this way, defendants avoid providing the Insurance
 10 Department with any detailed breakout or backup for the bulk of the costs that make up their
 11 collectively fixed rates.

12 75. TIRSA merely submits an aggregated figure that is supposed to represent the
 13 total agency commission costs. Embedded with this figure is the vast quantity of dollars that are
 14 funneled to and through the title agencies as kickbacks, financial inducements and other costs
 15 unrelated to the issuance of title insurance. Defendants' design in all of this has been to
 16 effectively "hide" the cost basis for their artificially high and collectively fixed title insurance
 17 premiums from the regulatory scrutiny that *Ticor* demands.

18 **D. Lack of Regulatory Supervision and Authority in New York and
 19 Other States Including California**

20 76. There is no provision under the New York Insurance Law for TIRSA to include
 21 in its collectively fixed rates kickbacks and other agency commission payments unrelated to the
 22 issuance of title insurance. Indeed, the New York Insurance Department has openly
 23 acknowledged that it lacks the authority to review any agency commission payments. It has
 24 likewise recognized that defendants' outsourcing of agency commission costs has prevented it
 25 from performing a meaningful review of TIRSA's calculated rates. This was made clear at a
 26 November 2006 public hearing the New York Insurance Department held — the first in 15
 27 years — where it questioned TIRSA and its members on TIRSA's failure to provide the
 28 Insurance Department with any backup or detail for agency commissions.

1 77. At the hearing, the Insurance Department conceded that it could not properly
2 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost
3 information on agency commissions that TIRSA does not provide.

4 78. The Insurance Department's recognition that it is not properly supervising
5 TIRSA's rate-setting activity is consistent with the April 2007 findings of the U.S. Government
6 Accountability Office ("GAO") that the title insurance industry is in need of greater state
7 regulation. The GAO studied the industry conditions of several states, including New York, and
8 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs and operations*, needed to analyze premium prices and underlying costs." (Emphasis
9 added.)

10 79. Unchecked by regulatory review and insulated from competition, defendants
11 have thus been able to collectively fix title insurance rates at supracompetitive levels and earn
12 profits that vastly exceed those contemplated by the Insurance Department or that would have
13 resulted in a free and open competitive market.

14 80. At the time of TIRSA's formation, the Insurance Department established 5
15 percent (of the total premium) as the level of profit to which title insurers are entitled. The
16 Insurance Department is supposed to carefully analyze TIRSA's rate calculations, and, in
17 particular, its revenue and cost information, to ensure that this 5 percent profit level is
18 maintained and based on a reasonable premium. However, without the authority or ability to
19 scrutinize agency commission costs, the Insurance Department has been unable to perform this
20 function. As a result, defendants (through TIRSA) have been able to set artificially high title
21 premiums and secure title profits far in excess of the 5 percent threshold.

22 81. Through an independent investigation conducted over the past several years, the
23 New York State Attorney General found that for every dollar of insurance premium defendants
24 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is
25 paid out in claims. And, of the roughly 85 cents that supposedly covers agency commissions,
26 only between 8 and 11 cents goes to costs actually incurred by title agents in producing the title
27

28

1 policy. These numbers show that title insurers' collectively fixed rates have resulted in profits
 2 that are untethered to and vastly exceed the costs of producing such policies.

3 82. The New York Attorney General's investigation further revealed that what was
 4 largely driving these numbers were the kickbacks and other financial inducements defendants
 5 were funneling to and through title agents to secure more business. As reported at the New
 6 York Insurance Department's 2006 hearing, one title agency's financial statements revealed that
 7 it spent more than \$1 million of these so-called "agency commissions" on items identified as
 8 "Christmas", "automobile expenses", "political contributions", "promotional expenses", and
 9 "travel and entertainment". These expenses are not even remotely related to the issuance of title
 10 insurance.

11 83. The Washington State Insurance Commissioner's October 2006 report found
 12 strikingly similar abuses in Washington. Violations were pervasive and the Commissioner
 13 concluded that consumers were paying too much as a result.

14 84. All of this "excess money" paid to title agents not only works to steer business to
 15 defendants. It also serves to boost defendants' own profits through the inflated revenues they
 16 obtain to cover these agency payments and through their ownership or management stake in
 17 many of these agencies.

18 85. Defendants are competitors in the sale of title insurance to consumers throughout
 19 the United States. These title insurers have agreed and engaged in concerted efforts to (i)
 20 collectively set and charge uniform and supracompetitive rates for title insurance, (ii) include in
 21 their calculated rates agency commission costs, (iii) embed within these costs payoffs,
 22 kickbacks, and other charges that are unrelated to the issuance of title insurance, and (iv) hide
 23 these supposed "costs" from regulatory scrutiny by funneling them to and through title agents
 24 over which the government agencies have no ability or authority to regulate.

25 86. The GAO in its 2007 report entitled "Actions Needed to Improve Oversight of
 26 the Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of
 27 competition and questions about the reasonableness of prices including:

28

- 1 • Consumers find it difficult to shop for title insurance, therefore,
2 they put little pressure on insurers and agents to compete based
3 on price;
- 4 • Title agents do not market to consumers, who pay for title
5 insurance, but to those in the position to refer consumers to
6 particular title agents, thus creating potential conflicts of
7 interest;
- 8 • A number of recent investigations by HUD and state regulatory
9 officials have identified instances of alleged illegal activities
10 with the title industry that appear to reduce price competition
11 and could indicate excessive prices;
- 12 • As property values or loan amounts increase, prices paid for
13 title insurance by consumers appear to increase faster than
14 insurers' and agents' costs; and
- 15 • In states where agents' search and examination services are not
16 included in the premium paid by consumers, it is not clear that
17 additional amounts paid to title agents are fully supported by
18 underlying costs.

19 87. The GAO visited several states, including California, and found a lack of
20 regulatory oversight:

21 In the states we visited, we found that regulators did not assess title
22 agents' costs to determine whether they were in line with premium
23 rates; had made only limited efforts to oversee title agents (including
24 ABAs involving insurers and agents); and, until recently, had taken
25 few actions against alleged violations of antikickback laws. In part,
26 this situation has resulted from a lack of resources and limited
27 coordination among different regulators within states. On the federal
28 level, authority for alleged violations of section 8 of RESPA, including
29 those involving increasingly complex ABAs, is limited to seeking
30 injunctive relief. Some state regulators expressed frustration with
31 HUD's level of responsiveness to their requests for help with
32 enforcement, and some industry officials said that RESPA rules
33 regarding ABAs and referral fees need to be clarified. Industry and
34 government stakeholders have proposed several regulatory changes,
35 including RESPA reform, strengthened regulation of agents, a
36 competitor right of action with no monetary penalty, and alternative
37 title insurance models. [*Id.* at 41, footnotes omitted.]

38 **E. Competition Based on Kickbacks and Inducements But Not Rates**

39 88. Having agreed to fix or stabilize prices in New York and other states where they
40 overtly meet to promulgate rates, these same defendants then set out to do the same in other
41 states.

42 89. In other words, as a direct result of these meetings where rates were agreed to,
43 these same defendants agree, either expressly or tacitly, to not compete on rates in other states

1 as well. To compete on rates in other states could and would imperil their ability to maintain
 2 the agreed rate in states like New York.

3 90. As in the case in New York, a lack of regulatory authority over rates created an
 4 environment in which a conspiracy can and did succeed. No agency was examining why all the
 5 rates were virtually identical, and no agency was examining whether the costs associated with
 6 these premiums were reasonable. This is an environment which is conducive to price fixing.

7 91. In California, there is a lack of regulatory authority and oversight over title
 8 insurance companies. The rates in California are not set as part of a deliberate state intervention
 9 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue
 10 in this case went into effect without review.

11 **F. Other Indicators of a Lack of Competition and Conditions
 12 Conducive to Collusive Rate Setting**

13 92. In addition to the uniformity of rates, other facts suggest that it is more plausible
 14 than not that rates have been set based on an agreement to fix prices.

15 93. In theory, the chain of title should be documented back to its historic grant of
 16 ownership centuries in the past. Fear about a possible title defect in the distant past is widely
 17 used as a justification by title agencies when convincing property buyers to purchase an owner
 18 policy in addition to the lender policy, which is mandatory to secure a mortgage. The title
 19 agency, however, saves much time and money when the search is limited to one or two
 20 transactions. They rely on the insurance policy to cover the remote chance of missing an earlier
 21 but still-valid claim. If such a claim is asserted and survives the scrutiny of the title insurance
 22 company's legal department, the expected cost of compensation is likely to be less than the sum
 23 of added overhead costs of routinely tracing back every chain of title to the earliest registered
 24 owner in the distant past.

25 94. Title insurance industry officials tend to justify the large proportion of the
 26 premium retained by the title abstract and settlement agency (from 60 to more than 90 percent)
 27 by the alleged high cost of title searching back into the distant past. In fact, a high proportion of
 28 noncommercial properties are searched only through the most recent transaction. No
 information is available as to what proportion of claims originate in the distant past. The

1 industry has never published pertinent statistics. It would have a marketing incentive to publish
2 these statistics if the risk were significant; that it has not published these statistics indicates that
3 the risk probably is only slightly greater than zero.

4 95. Many U.S. homes have been resold three or four times in twenty-five years. At
5 each of these occasions, an abstract of title will be prepared on the basis of a more or less
6 thorough review of the available title records, inheritance records, family records and records of
7 past or current liens against a property. It is reasonable, therefore, to suspect that the risk of a
8 title defect will decrease every time a property is sold.

9 96. Title searches have become less labor intensive, especially in large urban
10 counties and cities. More and more of the information is available online. The statistical
11 likelihood that a title default would be overlooked is a closely held industry secret, but it
12 appears to be so small that many transactions are not insured on the basis of a search of the last
13 owner's title history or a search into transactions that occurred during the last twenty-five to
14 thirty-five years. The evidence is strong that the title insurance industry has achieved a
15 remarkably high level of loss minimization.

16 97. Thus the costs of production have decreased as has the risk of loss yet none of
17 these factors has resulted in price competition at the consumer level.

18 98. There is remarkable absence of rate changes by title insurers over the past five
19 years, despite declining costs of production, increased number of transactions and increased
20 revenue per transaction. During a period when costs per unit of production declined
21 significantly, underwritten title companies and title insurers maintained excessive rates. The
22 prices charged by title insurers and underwritten title companies were not and are not responsive
23 to the changing costs of production or increasing revenue per transaction at a given set of rates.
24 Again, this is indicia of an agreement not to compete based on price.

25 99. As noted, the title companies engage in illegal rebates and kickbacks where the
26 title insurer or the underwritten title company provides money, free services or other things of
27 value to a real estate agent, a lender or homebuilder in exchange for business referrals. These
28 illegal rebates and kickbacks — a consequence of reverse competition — show that title

insurance rates are supra competitive and that some portion of the overcharge is passed from the underwritten title company or title insurer to the referrer of business.

3 100. A lack of competition and the ability to control prices is enhanced by the fact that
4 there were few title insurer entrants over the period from 1995 through 2005 and the number of
5 title insurer groups declined as title insurers acquired other title insurers. There were few
6 underwritten title company entrants over the 2000 to 2005 period and new entrants were
7 controlled business arrangements whose addition to the market did not result in greater price
8 competition.

9 101. Access to title plants can be a barrier to entry, but a larger barrier to entry exists
10 due to the established relationships between the entities that can steer the consumer's title and
11 escrow business and the entities who sell title insurance and escrow services.

12 102. The title insurance market is highly concentrated — a few title insurers account
13 for the vast majority of title insurance sales — at both the statewide level and at the county level
14 in California. For example, three title insurer groups account for 77.4% of the market at a
15 statewide level. At the county level, each individual market was highly concentrated. The
16 GAO found that First American and Fidelity had a market share of 66 percent. Such a
17 concentration enhances the ability of companies to fix prices.

18 103. The agreement not to compete based on price is also evidenced by the fact that
19 no company has marketed its services to consumers, the ultimate purchasers of the product.
20 This is in marked contrast to real insurance, for example, car insurance, where the companies
21 compete vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor,"
22 or Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

23 | VIII. CLAIMS FOR RELIEF

COUNT I

Violation of the Sherman Act

26 ||| 104. Plaintiffs incorporate by reference the preceding allegations.

27 105. Beginning at least as early as March 2004, and continuing thereafter to the
28 present, the exact dates being unknown to plaintiffs, defendants and their co-conspirators

1 engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate
2 trade and commerce in violation of Section 1 of the Sherman Act.

3 106. The aforesaid combination and conspiracy has consisted of a continuing
4 agreement, understanding and concert of action among the defendants and their co-conspirators,
5 the substantial terms of which have been:

6 (a) to fix, raise, maintain and stabilize the price of title insurance throughout
7 California;

8 (b) to fix, raise, maintain and stabilize the terms and conditions of sale of title
9 insurance in California; and

10 (c) to allocate and divide the market for title insurance in California.

11 107. In the absence of proper regulatory authority and oversight, defendants' conduct
12 constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to
13 allocate and divide the title insurance market in California and is a *per se* violation of Section I
14 of the Sherman Act.

15 108. Defendants' price-fixing, market allocation and division activity has been
16 continuous throughout the relevant damages period and has been renewed and reinforced
17 annually through submissions to the OIC of supposed cost and revenue information and its
18 periodic submissions of rate changes.

19 109. Through their collective price-fixing, market allocation and division and
20 manipulation of the regulatory process, defendants have harmed competition by charging
21 consumers supra competitive prices for title insurance in California, evidenced in part by the
22 fact that the prices are uniformly higher than compared with the cost of providing the insurance.

23 110. The aforesaid combination and conspiracy has had the following effects among
24 others:

25 (a) price competition in the sale of title insurance has been suppressed,
26 restrained and eliminated;

27 (b) prices for title insurance have been raised, fixed, maintained and
28 stabilized at artificially high and non-competitive levels; and

(c) purchasers of title insurance have been deprived of the benefit of free and open competition.

111. During the period of the antitrust violations by defendants and their co-conspirators, plaintiffs and each member of the Class they represent, have purchased title insurance and, by reason of the antitrust violations herein alleged, paid more for such than they would have paid in the absence of said antitrust violations. As a result, plaintiffs and each member of the Class they represent, have been injured and damaged in an amount presently undetermined.

COUNT II

Violation of Cal. Bus. and Prof. Code § 16720, et seq.

11 ||| 112. Plaintiffs incorporate by reference the preceding allegations.

12 113. Defendants' conduct as set forth above is in violation of the Cartwright Act of
13 California (Cal. Bus. & Prof. Code § 16720, *et seq.*).

14 114. As a direct result of defendants' unlawful acts plaintiffs have paid artificially
15 inflated prices for title insurance and have suffered injury to their business and property.

COUNT III

Violation of Cal. Bus. And Prof. Code § 17200, *et seq.*

18 115. The preceding paragraphs of this Complaint are realleged and incorporated by
19 reference. Plaintiffs assert this claim for violations of California's UCL, Bus. & Prof. Cod §
20 17200, *et seq.*, on behalf of themselves and the members of the Class.

21 116. Defendants' statements and representations constitute unfair, unlawful and
22 deceptive trade practices in violation of the UCL.

23 117. All of the wrongful conduct alleged herein occurs and continues to occur in the
24 conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or
25 generalized course of conduct that is repeated in the State of California on hundreds, if not
26 thousands, of occasions daily.

118. Plaintiffs have suffered injury in fact and have lost money or property as a result of defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance than they would or should have absent the conduct complained of.

119. Plaintiffs request that this Court enter such orders or judgment as may be necessary to enjoin the defendants from continuing their unfair, unlawful, and/or deceptive practices, to restore to any person in interest any money which may have been acquired by means of such unfair competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

COUNT IV

Unjust Enrichment

120. Plaintiffs incorporate by reference the preceding allegations.

121. This Cause of Action is pled in the alternative to all claims and/or causes of action at law.

122. Defendants have received a benefit from plaintiffs and the Class members in the form of the prices plaintiffs and the Class members paid for defendants' title insurance.

123. Defendants are aware of their receipt of the above-described benefit.

124. Defendants received the above-described benefit to the detriment of plaintiffs and each of the other members of the Class.

125. Defendants continue to retain the above-described benefit to the detriment of plaintiffs and the Class members.

126. As a result of defendants' unjust enrichment, plaintiffs and the Class members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand:

A. That the alleged combination and conspiracy among the defendants and their co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

B. That the Court declare that the premiums charged are excessive under state law and order damages;

C. That judgment be entered against defendants, jointly and severally, and in favor of plaintiffs, and each member of the Class they represent, for threefold the damages determined to have been sustained by plaintiffs, and each member of the Class they represent, together with the cost of suit, including a reasonable attorneys' fee;

D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any matter, directly or indirectly, continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding or concert of action, adopting or following any practice, plan, program, or design having a similar purpose or effect in restraining competition; and

E. Such other and further relief as may appear necessary and appropriate.

JURY TRIAL DEMAND

Pursuant to Rule 38, F.R.C.P., plaintiffs demand a trial by jury of the claims alleged herein.

DATED: March 18, 2008

BARRACK, RODOS & BACINE
STEPHEN R. BASSER
~~JOHN L. HAEUSSLER~~

402 West Broadway, Suite 850
San Diego, CA 92101
Telephone: (619) 230-0800
Facsimile: (619) 230-1874

1 BARRACK, RODOS & BACINE
2 GERALD J. RODOS
3 JEFFREY GITTELMAN
4 3300 Two Commerce Square
5 2001 Market Street
6 Philadelphia, PA 19103
7 Telephone: (215) 963-0600
8 Facsimile: (215) 963-0838

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11 Attorneys for Plaintiffs Louis and Silvia
12 Martinez
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**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 148885 - SH
* * C O P Y * *
March 18, 2008
11:33:34**

Civ Fil Non-Pris
USAO #: 08CV0499
Judge.: M. JAMES LORENZ
Amount.: \$350.00 CK
Check#: BC5842

Total-> \$350.00

FROM: MARTINEZ V. FIDELTIY NAT'L
FINANCIAL INC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Louis Martinez
Silvia Martinez

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen R. Bassler, John L. Haeussler, Barrack, Rodos & Bacine,
402 West Broadway, Suite 850, San Diego, CA 92101 (619)230-0800

DEFENDANTS

Fidelity National Financial, Inc., Fidelity National Title Insurance Company, (list continues on Attachment A to Civil Cover Sheet)

CLERK, U.S. DISTRICT COURT
County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. BY:

Attorneys (If Known)

DEPUTY

'08 CV U 499 L WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input checked="" type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRIISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act.
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Class action for violation of the antitrust laws pursuant to Section 1 of the Sherman Act; violation of California Bus. and Prof. Code and Unjust Enrichment 15 U.S.C. § 1526

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/18/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 148885 AMOUNT \$ 350

APPLYING IPP

JUDGE

MAG. JUDGE

Sei 3/18/08

(R)

EXHIBIT 6

FILED

1 Christopher Kim (SBN 082080)
 2 Lisa J. Yang (SBN 208971)
LIM RUGER & KIM, LLP
 3 1055 West Seventh Street, Suite 2800
 4 Los Angeles, California 90017
 Telephone: (213) 955-9500
 5 email: christopher.kim@lrklawyers.com
lisa.yang@lrklawyers.com

7 Joseph H. Meltzer
 8 Edward W. Ciolko
 Katherine B. Bornstein (SBN 249926)
 9 Terence S. Ziegler
 Casandra A. Murphy
SCHIFFRIN BARROWAY
TOPAZ & KESSLER, LLP
 12 280 King of Prussia Road
 Radnor, Pennsylvania 19087
 Telephone: (610) 667-7706

14 Counsel for Plaintiffs,

2008 MAR 20 PM 4:11

CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

83
 Alan R. Plutzik (SBN. 077785)
 Robert M. Bramson (SBN 102006)
SCHIFFRIN BARROWAY TOPAZ
& KESSLER, LLP
 2125 Oak Grove Road, Suite 120
 Walnut Creek, CA 94598
 Telephone: (925) 945-0770

LIM, RUGER & KIM, LLP

16
 17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**
 19 **WESTERN DIVISION**

20 VINCENT LEON DAVIS, individually
 21 and on behalf of all others similarly
 situated,

22 Plaintiff,

24 v.

25 FIDELITY NATIONAL FINANCIAL,
 INC., FIDELITY NATIONAL TITLE
 INSURANCE COMPANY, TICOR
 TITLE INSURANCE COMPANY,
 27 TICOR TITLE INSURANCE
 COMPANY OF FLORIDA, CHICAGO
 TITLE INSURANCE COMPANY,
 28

Case No. CV08-01897 DSE JWW

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 NATIONAL TITLE INSURANCE OF
 2 NEW YORK, INC., SECURITY
 3 UNION TITLE INSURANCE
 4 COMPANY, THE FIRST AMERICAN
 5 CORPORATION, FIRST
 6 AMERICAN TITLE INSURANCE
 7 COMPANY, UNITED
 8 GENERAL TITLE INSURANCE
 9 COMPANY, LANDAMERICA
 10 FINANCIAL GROUP, INC.,
 11 COMMONWEALTH LAND TITLE
 12 INSURANCE COMPANY, LAWYERS
 13 TITLE INSURANCE
 14 CORPORATION, TRANSNATION
 15 TITLE INSURANCE COMPANY,
 16 STEWART TITLE GUARANTY
 17 COMPANY and STEWART TITLE
 18 INSURANCE COMPANY

19 Defendants.

20 Plaintiff, ("Plaintiff") by his attorneys, on behalf of himself and all others
 21 similarly situated, hereby seek treble damages, other monetary relief and injunctive
 22 relief for defendants' violations of United States and California antitrust laws
 23 alleging as follows:

24 I. INTRODUCTION

25 1. The purpose of title insurance is to protect the buyer against
 26 previously undiscovered title defects which may encumber the use, enjoyment or
 27 transfer of the property. Title insurers do not guarantee a clean title but rather
 28 safeguard the policyholder against title defects found after the property has been
 transferred. Therefore, the only protection afforded to the insured concerns the
 highly unlikely event that an undetected title deficiency existed prior to the time
 the policy was issued.

29 2. Consumers often find themselves in unfamiliar territory when it comes
 30 to title insurance. The majority of homebuyers are overwhelmed by the

1 tremendous amount of paperwork that is flashed before their eyes during the
2 closing process of a home purchase. They generally walk away from the closing
3 without any understanding of their title insurance policy. There is a marked
4 contrast between title insurance and traditional life, automotive and homeowner
5 insurance policies that are marketed to consumers.

6 3. Title companies do not engage in direct to consumer marketing.
7 Instead, the title insurance industry operates on what is termed a "reverse
8 competition" model. Reverse competition means that title insurers solicit business
9 referrals from the other major players in the home purchase scenario – real estate
10 agents and agencies, banks, lenders, builders, developers and other middlemen or
11 go-betweens who are in the best position to influence buyers. Indeed, buyers
12 typically defer, often unknowingly, to their lender, builder, real estate agent or
13 representative to select a title company. These middlemen act on behalf of the title
14 insurance companies in return for receiving kickbacks and other financial
15 incentives. Insurance consumers, in most cases, are effectively removed from the
16 decision-making process and assigned a policy. The title insurance industry
17 operates on an inherently corrupt system that eliminates competition based on the
18 services and policies rendered. In fact, their rates and policy structures are
19 primarily dictated through publications created by their national trade association,
20 the American Land Title Association.

21 4. Reverse competition, as the term suggests, isn't a model that benefits
22 consumers through market-driven forces. In fact, consumers are bypassed
23 completely as title companies spend nearly all of their marketing budgets "wining
24 and dining" real estate agents, lenders, builders, developers and others in an effort
25 to convince these middlemen to steer their home-buying clients to their companies
26 for their title insurance needs.

27 5. The California title insurance market is dominated by four groups of
28

1 affiliated companies which control over 90 percent of the policies sold in the state.
 2 In addition, these powerful groups own and control a majority of California title
 3 plants that virtually every title insurer uses to issue title policies.

4 6. Title insurers have industry meetings where they set rates that are
 5 ultimately filed and frequently rubberstamped by the applicable state insurance
 6 agency. The title insurance companies, in their respective markets, collectively
 7 come to an agreement on a set price that in no manner accounts for their minuscule
 8 risk exposure or the nature of the property being insured. They are able to
 9 essentially regulate themselves and eliminate any competition in the consumer
 10 market. As a result of the joint agreement as to rates, the courting of middlemen
 11 through financial rewards is the only aspect of title insurance business that is
 12 competitive.

13 7. Having agreed to fix prices in states where joint rate setting occurs, the
 14 companies agreed to not compete based on price to the consumer in other states,
 15 including California., where regulation of filed rates is lax or non-existent. Thus,
 16 they agreed to set rates at supracompetitive prices and to compete based on
 17 offering inducements to middlemen. In California, in three successive reports, the
 18 Office of the Insurance Commissioner ("OIC") has found an "astonishing number"
 19 of such inducements that are in violation of state law. However, the OIC does not
 20 actively oversee or regulate rates, and, in fact, does not by its own admission have
 21 the power to do so. The absence of regulation has allowed collusive behavior and
 22 excessive rates.

23 8. In addition to paying inducements and kickbacks, the title companies
 24 and their agents divide the market of real-estate middlemen through the use of
 25 Affiliated Business Arrangements ("ABAs"), wherein the dominant real estate
 26 brokers purchase significant ownership stakes in favored title insurance affiliates.
 27 The real estate brokers then reward their associates for using the preferred title
 28

1 insurance providers and lock out independent title insurers.

2 9. In this action, plaintiff, on behalf of a Class of those purchasing title
3 insurance in California, seek damages arising from defendants' violations of the
4 Sherman Act as well as California statutory law.

5 II. JURISDICTION AND VENUE

6 10. Plaintiff and class members bring this action to recover monetary
7 damages, including treble damages, and to obtain injunctive relief, costs of suit,
8 and reasonable attorneys' fees arising from the defendants' violations of Section 1
9 of the Sherman Act (15 U.S.C. § 1).

10 11. This Court has jurisdiction over this action pursuant 28 U.S.C. §§
11 1331, 1337(a) and 1367.

12 12. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15
13 and 22, and 28 U.S.C. § 1391 (b) and (c), in that defendants maintain offices,
14 conduct business or are found within this judicial district.

15 III. PARTIES

16 A. Plaintiff

17 13. Plaintiff, Vincent Leon Davis, is an individual residing in Los Angeles
18 County, California. During the class period, plaintiff purchased title insurance
19 directly from one or more defendants herein and was injured by the unlawful
20 conduct alleged in this complaint.

21 B. Defendants

22 14. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a
23 Delaware corporation headquartered at 601 Riverside Avenue, Jacksonville,
24 Florida 32204. Fidelity National does business in California through one or more
25 of its subsidiaries, including but not limited to, defendants Fidelity National Title
26 Insurance Company, Ticor Title Insurance Company, Ticor Title Insurance
27 Company of Florida, National Title Insurance of New York, Inc., Security Union
28

1 Title Insurance Company, and Chicago Title Insurance Company. Fidelity
2 National is registered to do business in California.

3 15. Defendant Fidelity National Title Insurance Company ("FNTIC") is a
4 California Corporation with its principal place of business at 601 Riverside Ave.,
5 Jacksonville, Florida 32204. FNTIC does business in California, is a licensed title
6 insurance company in California and is registered to do business in California.

7 16. Defendant Ticor Title Insurance Company ("Ticor") is a California
8 Corporation with its principal place of business at 601 Riverside Ave.,
9 Jacksonville, Florida 32204. Ticor does business in California, is a licensed title
10 insurance company in California and is registered to do business in California.

11 17. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a
12 Florida corporation with its principal place of business at 601 Riverside Ave.,
13 Jacksonville, Florida 32204. TTICF does business in California, is a licensed title
14 insurance company in California and is registered to do business in California.

15 18. Defendant Chicago Title Insurance Company ("Chicago Title") is a
16 Missouri Corporation with its principal place of business at 601 Riverside Ave.,
17 Jacksonville, Florida 32204. Chicago Title does business in California, is a
18 licensed title insurance company in California and is registered to do business in
19 California.

20 19. Defendant National Title Insurance of New York, Inc. ("NTINY") is a
21 New York corporation with its principal place of business at 601 Riverside Ave.,
22 Jacksonville, Florida 32204. NTINY does business in California, is a licensed title
23 insurance company in California and is registered to do business in California.

24 20. Defendant Security Union Title Insurance Company ("SUTIC") is a
25 California corporation with its principal place of business at 601 Riverside Ave.,
26 Jacksonville, Florida 32204. SUTIC does business in California, is a licensed title
27 insurance company in California and is registered to do business in California.

1 21. The Fidelity family of title insurance companies (collectively,
 2 "Fidelity") – which includes defendants Fidelity National, FNTIC, Ticor, TTICF,
 3 Chicago Title, NTINY and SUTIC, and their affiliates – is engaged in selling title
 4 insurance to purchasers of commercial and residential real estate throughout the
 5 United States, including California. Nationally, Fidelity accounts for
 6 approximately 27 percent of title premiums, which in 2006 amounted to roughly
 7 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA
 8 (defined below) and since TIRSA's inception have charged title insurance rates in
 9 New York that TIRSA collectively sets.

10 22. The Fidelity family of title insurance companies and their affiliates are
 11 wholly-owned and controlled by defendant Fidelity National Financial, Inc.
 12 Through its subsidiaries, Fidelity National is a provider of title insurance, specialty
 13 insurance, and claims management services. Fidelity National had 2006 revenues
 14 of roughly \$9.4 billion. The Fidelity family of title insurance companies engaged
 15 in the conduct challenged herein with the approval and assent of defendant Fidelity
 16 National.

17 23. Defendant The First American Corporation ("First American") is a
 18 California corporation with its headquarters at 1ST American Way, Santa Ana,
 19 California 92707. First American does business in California through one or more
 20 of its subsidiaries, including but not limited to, defendants First American Title
 21 Insurance Company and United General Title Insurance Company.

22 24. Defendant First American Title Insurance Company ("FATIC") is a
 23 California corporation with its headquarters at 1st American Way, Santa Ana,
 24 California 92707. FATIC does business in California, is a licensed title insurance
 25 company in California and is registered to do business in California.

26 25. Defendant United General Title Insurance Company ("UGTIC") is a
 27 Colorado corporation located at 8310 S. Valley Highway, Suite 130, Englewood,
 28

1 CO 80112. UGTIC does business in California, is a licensed title insurance
 2 company in California and is registered to do business in California.

3 26. The First American family of title insurance companies (collectively,
 4 "First American") – which includes defendants First American, FATIC and
 5 UGTIC, and their affiliates – is engaged in selling title insurance to purchasers of
 6 commercial and residential real estate throughout the United States, including
 7 California. Nationally, First American accounts for approximately 29 percent of
 8 title premiums, which in 2006 amounted to roughly \$4.8 billion. First American
 9 Title was a founding member of TIRSA and since TIRSA's inception has charged
 10 title insurance rates in New York that TIRSA collectively sets.

11 27. The First American family of title insurance companies and their
 12 affiliates are wholly-owned and controlled by defendant The First American
 13 Corporation. Through its subsidiaries, First American is a provider of title
 14 insurance, business information, and related products and services. First American
 15 had 2006 revenues of roughly \$8.5 billion. The First American family of title
 16 insurance companies and their affiliates engaged in the conduct challenged herein
 17 with the approval and assent of defendant First American.

18 28. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a
 19 Virginia corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060.
 20 Land America does business in California through one or more of its subsidiaries,
 21 including but not limited to, defendants Commonwealth Land Title Insurance
 22 Company, Lawyers Title Insurance Corporation and Transnation Title Insurance
 23 Company.

24 29. Defendant Commonwealth Land Title Insurance Company ("CLTIC")
 25 is a Pennsylvania corporation with its principal place of business at 5600 Cox Road,
 26 Glen Allen, Virginia 23060. CLTIC does business in California, is a licensed title
 27 insurance company in California and is registered to do business in California.

1 30. Defendant Lawyers Title Insurance Corporation ("LTIC") is a
2 Nebraska corporation with its principal place of business at 5600 Cox Road, Glen
3 Allen, Virginia 23060. LTIC does business in California, is a licensed title
4 insurance company in California and is registered to do business in California.

5 31. Defendant Transnation Title Insurance Company ("TNTIC") is a
6 Nebraska corporation with its principal place of business at 5600 Cox Road, Glen
7 Allen, Virginia 23060. TNTIC does business in California, is a licensed title
8 insurance company in California and is registered to do business in California.

9 32. The LandAmerica family of title insurance companies (collectively,
10 "LandAmerica") – which includes defendants LandAmerica, CLTIC, LTIC and
11 TNTIC, and their affiliates – is engaged in selling title insurance to purchasers of
12 commercial and residential real estate throughout the United States, including
13 California. Nationally, LandAmerica accounts for approximately 19 percent of title
14 premiums, which in 2006 amounted to roughly \$3.15 billion. Commonwealth and
15 Lawyers Title were founding members of TIRSA and since TIRSA's inception
16 have charged title insurance rates in New York that TIRSA collectively sets.

17 33. The LandAmerica family of title insurance companies and their
18 affiliates are wholly-owned and controlled by defendant Land America Financial
19 Group, Inc. Through its subsidiaries, LandAmerica is a provider of title insurance
20 and other products and services that facilitate the purchase, sale, transfer, and
21 financing of residential and commercial real estate. LandAmerica had 2006
22 revenues of roughly \$4 billion. The LandAmerica family of title insurance
23 companies and their affiliates engaged in the conduct challenged herein with the
24 approval of defendant LandAmerica.

25 34. Defendant Stewart Title Guaranty Company ("STGC") is a Texas
26 corporation headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas
27 77056. STGC does business in California, is a licensed title insurance company in
28

1 California and is registered to do business in California.

2 35. Defendant Stewart Title Insurance Company ("STIC") is a New York
 3 corporation with its principal place of business at 300 E. 42nd St., Floor 10, New
 4 York, NY 10017. STIC does business in California, is a licensed title insurance
 5 company in California and is registered to do business in California.

6 36. The Stewart family of title insurance companies (collectively,
 7 "Stewart") – which includes defendants STGC and STIC, and its affiliates – is
 8 engaged in selling title insurance to purchasers of commercial and residential real
 9 estate throughout the United States and California. Nationally, Stewart accounts
 10 for approximately 12 percent of title premiums, which in 2006 amounted to
 11 roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's
 12 inception has charged title insurance rates in New York that TIRSA collectively
 13 sets.

14 37. Together, defendants account for more than 85 percent of the title
 15 premiums consumers pay in California. Nationally, they account for more than 85
 16 percent of title premiums, which in 2006 amounted to roughly \$14.5 billion.
 17 Throughout the relevant damages period, defendants charged California consumers
 18 in California virtually identical title insurance rates.

19 IV. OTHER ENTITIES

20 38. TIRSA is a voluntary association of title insurers licensed as a rate
 21 service organization pursuant to Article 23 of the State of New York Insurance
 22 Law. TIRSA maintains its offices in New York City, which until recently were
 23 located at the same New York address of Fidelity Title.

24 39. TIRSA annually compiles from its members statistical data relating to
 25 their title insurance premiums, losses and expenses and submits this information in
 26 aggregate form to the New York Insurance Department. TIRSA also prepares and
 27 submits the New York Title Insurance Rate Manual which sets forth title rates to

1 be charged and rules to be followed by TIRSA's members. The Insurance
2 Department has never objected to any of the rates TIRSA has collectively set.
3 Similarly, the California OIC has not actually held a public hearing or conducted
4 any other review or regulation of the title insurance rates in California for thirty
5 years.

6 40. TIRSA's membership is comprised of defendant insurers and all other
7 title insurers that are licensed to issue policies in New York. Currently, Fidelity,
8 First American, LandAmerica, and Stewart collectively represent 14 of TIRSA's 22
9 members. As such, they comprise a majority voting block which, according to
10 TIRSA's by-laws, allows them to control the operations of TIRSA and, in
11 particular, TIRSA's collective rate setting activity.

12 41. Various other persons, firms and corporations not made defendants
13 herein have participated as co-conspirators with the defendants in the violations
14 alleged herein and have performed acts and made statements in furtherance
15 thereof.

V. CLASS ACTION ALLEGATIONS

17 42. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of
18 Civil Procedure, particularly Rule 23(b)(3), on behalf of himself and the following
19 class (the “Class”):

20 All persons who purchased title insurance directly from
21 one or more of the defendants and/or their co-
22 conspirators for residential and commercial property in
23 California during the four year period preceding this
24 lawsuit. Excluded from the Class are defendants, their
25 parent companies, subsidiaries and affiliates, government
26 entities and judges or justices assigned to hear any aspect
27 of this case.

1 43. Plaintiff does not currently know the exact number and identities of
 2 class members but such information is known by defendants and is ascertainable.
 3 through appropriate discovery. Plaintiff believes that the number of potential class
 4 members is so numerous that joinder is impracticable.

5 44. Plaintiff's claims are typical of the Class because all members of the
 6 Class are direct purchasers of title insurance, injured in the same manner by the
 7 same wrongful conduct of defendants, and seek relief that is common to the Class.
 8 The questions of law and fact common to the Class members predominate over any
 9 questions which may affect only individual members.

10 45. Plaintiff will fairly and adequately represent the interests of the Class
 11 in that plaintiff is a direct purchaser of title insurance during the relevant damage
 12 period and has no conflict with any other members of the Class. Furthermore,
 13 plaintiff has retained competent counsel experienced in antitrust class action
 14 litigation.

15 46. Plaintiff, along with other members of the Rule 23(b)(3) Class, was
 16 injured as a result of paying supracompetitive prices for title insurance in
 17 California. These supracompetitive prices were achieved as a result of defendants'
 18 illegal price-fixing activities and market allocation and division.

19 47. Members of the (b)(3) Class include hundreds of thousands, if not
 20 millions, of consumers. They are so numerous that their joinder would be
 21 impracticable.

22 48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of
 23 the Federal Rule of Civil Procedure, which includes all members of the 23(b)(3)
 24 Class, and all consumers who are threatened with injury by the anticompetitive
 25 conduct detailed herein.

26 49. Defendants have acted, continued to act, refused to act and continued
 27 to refuse to act on grounds generally applicable to the Rule 23(b)(2) Class, thereby
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making appropriate final injunctive relief with respect to the Rule 23(b)(2) Class as a whole.

50. Members of the Rule 23(b)(2) Class include hundreds of thousands, if not millions, of consumers. They are so numerous that their joinder would be impracticable.

51. Among the questions of law and fact common to the Class are:

- (a) Whether defendants have engaged in the alleged illegal price-fixing activity and market allocation and division;
 - (b) The duration and scope of defendants' alleged illegal price-fixing and market allocation and division activity;
 - (c) Whether defendants' alleged illegal price-fixing and market allocation and division has caused higher prices to plaintiff and other purchasers of title insurance in California; and
 - (d) Whether plaintiff and the other class members are entitled to, among other things, injunctive relief, and if so, the nature and extent of such injunctive relief.

17 52. A class action is superior to other available methods for the fair and
18 efficient adjudication of this controversy. The prosecution of duplicative litigation
19 by individual Class members would create an unnecessary risk of inconsistent or
20 varying adjudications potentially leading to the establishment of incompatible
21 standards of conduct for defendants. The Class is readily definable and the
22 prosecution as a class action provides the only adequate means of redress for
23 otherwise diminutive claims that could not reasonably support the expense of an
24 individual litigation.

VI. TRADE AND COMMERCE

26 53. During the Class period, each defendant and their co-conspirators sold
27 title insurance in California and in a continuous and uninterrupted flow of

1 interstate commerce

2 54. During the Class period, defendants collectively dominated the title
 3 insurance market. Title insurance consumers in the United States paid an
 4 estimated \$17 billion for residential title insurance in 2005.

5 55. During the Class period, defendants dominated over 85% of the title
 6 insurance market in California and the United States.

7 56. During the Class period, Class members outside of California
 8 purchased residential or commercial title insurance within the State of California.

9 57. The business activities of the defendants and their co-conspirators
 10 were within the flow of interstate commerce and substantially affected interstate
 11 commerce in the United States.

12 **VII. FACTUAL ALLEGATIONS**

13 **A. The Nature of Title Insurance**

14 58. In California, title insurance rates are based on a percentage of the
 15 total value of the property being insured. For example, a California residential
 16 property that was sold for \$500,000 would have cost the buyer approximately
 17 \$1,500 for title insurance in 2005.

18 59. Consumers are required to purchase title insurance when they take
 19 possession of property. Mortgage loans will not be approved without the security
 20 of a title insurance policy. Title companies perform extensive research to identify
 21 any defects that may encumber a property before it is transferred to an owner.
 22 Title insurance is a necessary commodity that protects an owner from defects that
 23 existed, but were not identified by the title company, prior to their settlement.

24 60. Title insurance companies operate their business on the premise that
 25 consumers are generally uninformed or unaware of all matters concerning title
 26 insurance. Buyers are generally not presented, at any time, with an opportunity to
 27 make an independent decision regarding any aspect of their property title. In most

1 cases, the buyer is not aware that they have a choice when it comes to selecting a
 2 title company. Even a sophisticated buyer, however, is powerless at the bargaining
 3 table because title companies have eliminated competition from the market. The
 4 unregulated, fixed rate charged for title insurance is not, by any reasonable
 5 evaluation, commensurate with the associated risks assumed and the services
 6 rendered.

7 61. The title insurer bears a statistically minimal risk for undetected title
 8 defects that existed prior to the transfer of property. A competent review of the
 9 previous ownership history should reveal any encumbrances, liens, exclusions, or
 10 other defects in the title which are excluded from the insured's policy. The
 11 information necessary to identify title deficiencies is readily available and highly
 12 dependable. The extent of the search itself is dependant on a number of factors
 13 including the earliest recorded age of the property, the number of transfers, and the
 14 integrity and accessibility of ownership records. The complexity of the title
 15 company's research and review process is unrelated to the value of the property or
 16 rate charged to the insured. Indeed, the national average recovery for a claim on a
 17 title insurance policy is approximately 5% of the total premium. On the other
 18 hand, the national average for property insurance is approximately 80% of the total
 19 premium collected.

20 62. The most effective, but illegal, way for a particular title insurer to get
 21 business is to encourage those making the purchasing decisions – the real-estate
 22 middlemen – to steer business to that insurer. The best way to so motivate the
 23 middlemen is not through lower prices (that they are not even paying). Rather, it is
 24 through kickbacks in the form of finder's fees, gifts, meals, business services and
 25 other financial enticements. Therefore, it is through higher pricing (which allows
 26 for generous inducements and kickbacks), not lower pricing that provides the best
 27 way for title insurers to compete and increase their business.

1 63. New York is one of several states in which the leading title insurers
 2 collectively fix their prices through a rate-setting organization like TER.SA. There
 3 are two principal cost components that go into TIRSA's calculation. One
 4 comprises the risk associated with issuing the title policy. The other comprises the
 5 "agency commissions" paid to title agents.

6 64. The risk component covers the risk the title insurer bears for any
 7 undiscovered defects in the title. Unlike property insurance, title insurance carries
 8 with it a very limited risk of loss to the insurer. That is because title insurance
 9 protects against unknown prior events that cause defects in title. With a proper
 10 search and examination of prior ownership records, any such defects can and
 11 almost always are readily identified and excluded from the policy's coverage.
 12 Consequently, the average claim payout on a title insurance policy in the United
 13 States amounts to only about 5 percent of the total premium collected. This is very
 14 different from property coverage (such as auto and home insurance) — which
 15 protects against future occurrences over which the insurer has little to no control —
 16 where the average claim payout amounts to about 80 percent of the total premium.

17 65. The "agency commissions" component of the title insurance rate
 18 covers payments made to title agents. Defendants have an ownership or
 19 management stake in many of the title agencies to which these payments are made.
 20 A small portion of these payments is for the search and exam of prior ownership
 21 records of the property being purchased to identify any liens, encumbrances,
 22 burdens, exclusions, or other defects in the title. The search and exam function
 23 does not involve the spreading or underwriting of risk, and title insurers typically
 24 outsource this task to title agents.

25 66. The remainder, and by far the bulk, of the agency commissions are
 26 comprised of costs unrelated to the issuance of title insurance. These costs include
 27 kickbacks and other financial inducements title insurers provide to title agents and
 28

1 indirectly (through title agents) to the lawyers, brokers, and lenders who, in reality,
 2 are the ones deciding which title insurer to use. These payments have nothing to do
 3 with the issuance of title insurance and are made by title insurers merely to inflate
 4 their revenues and steer business their way.

5 67. Under TIRSA's collective rate setting regime, roughly 85 percent of
 6 the total title insurance premium is based on the so-called "costs" associated with
 7 the payment of agency commissions. Only 15 percent is based on costs associated
 8 with the risk of loss.

9 68. TIRSA publishes its final calculated title rates in the New York Title
 10 Insurance Rate Manual. These rates are tied to the value of the property being
 11 insured. This is so despite the fact that the costs associated with agency
 12 commissions are entirely unrelated to the value of the property. Indeed, agency
 13 kickbacks and enticements have little to do with producing a particular title policy
 14 and provide no value – proportional to property value or otherwise – to the
 15 consumer. Even search and exam costs are unrelated to property value. They
 16 instead depend on the age of the property, the complexity of the ownership history,
 17 and the accessibility of prior ownership records.

18 69. There are other states in which the defendants overly meet and agree
 19 to fix the rates for title insurance as part of a formal collective rate setting process.

20 **B. TIRSA's Formation**

21 70. Prior of TIRSA, the New York Board of Title Underwriters
 22 ("NYBTU") served as the title insurance rate-setting body in New York. NYBTU,
 23 along with the title insurance rate setting bureaus in many other states, was
 24 disbanded in the mid-1980s in the wake of a Federal Trade Commission ("FTC").
 25 challenge to the collective rate setting activity of many of these associations. The
 26 FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992),
 27 where the Supreme Court held that to avoid per se illegal price-fixing liability, the
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1 rate setting activity of these rating bureaus must be actively supervised by the state.

2 71. In *Ticor*, the Supreme Court ruled that the rate establishing entities
 3 within the individual states must be overseen and regulated by the state to avoid
 4 per se price-fixing in violation of the Sherman Act. The Court found that the
 5 respective state insurance departments failed to perform an independent review of
 6 the title insurance industry's self-proclaimed fixed rates to determine their
 7 reasonableness. It was held that the state insurance department must "exercise
 8 sufficient independent judgment and control so that the details of the rates or prices
 9 have been established as a product of deliberate state intervention, not simply by
 10 agreement among private parties." *Ticor*, 504 U.S. at 634-35.

11 72. The Third Circuit, reviewing *Ticor* on remand, concurred with the
 12 FTC's finding that the collective rate-setting of certain state rating bureaus was
 13 improper because it was not actively supervised by the state. The court wrote,
 14 "[t]he Supreme Court plainly instructed us that a state's rubber stamp is not
 15 enough. Active supervision requires the state regulatory authorities' independent
 16 review and approval." *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129, 1139 (3d Cir.
 17 1992).

18 73. Defendants implemented a counter maneuver designed to circumvent
 19 the Supreme Court's ruling in *Ticor*. Through TIRSA, defendants have set up a
 20 rate-setting scheme to get around the rigors of state oversight required by *Ticor*.
 21 They have done so by calculating a single rate that comprises both risk and agency
 22 commission costs and by outsourcing to title agents the agency commission costs.
 23 In this way, defendants avoid providing the Insurance Department with any
 24 detailed breakout or backup for the bulk of the costs that make up their collectively
 25 fixed rates.

26 74. TIRSA merely submits an aggregated figure that is supposed to
 27 represent the total agency commission costs. Embedded within this figure is the
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1 vast quantity of dollars that are funneled to and through the title agencies as
 2 kickbacks, financial inducements and other costs unrelated to the issuance of title
 3 insurance. Defendants' design in all of this has been to effectively "hide" the cost
 4 basis for their artificially high and collectively fixed title insurance premiums from
 5 the regulatory scrutiny that Ticor demands.

6 **C. Lack of Regulatory Supervision and Authority in New York
 7 and Other States Including California**

8 75. There is no provision under the New York Insurance Law for TIRSA
 9 to include in its collectively fixed rates kickbacks and other agency commission
 10 payments unrelated to the issuance of title insurance. Indeed, the New York
 11 Insurance Department has openly acknowledged that it lacks the authority to
 12 review any agency commission payments. It has likewise recognized that
 13 defendants' outsourcing of agency commission costs has prevented it from
 14 performing a meaningful review of TIRSA's calculated rates. This was made clear
 15 at a November 2006 public hearing the New York Insurance Department held – the
 16 first in 15 years – where it questioned TIRSA and its members on TIRSA's failure
 17 to provide the Insurance Department with any backup or detail for agency
 18 commissions.

19 76. At the hearing, the Insurance Department conceded that it could not
 20 properly evaluate TIRSA's calculated rates, and that it could only do so if it
 21 obtained the detailed cost information on agency commissions that TIRSA does
 22 not provide.

23 77. The Insurance Department's recognition that it is not properly
 24 supervising TIRSA's rate-setting activity is consistent with the April 2007 findings
 25 of the U.S. Government Accountability Office ("GAO") that the title insurance
 26 industry is in need of greater state regulation. The GAO studied the industry
 27 conditions of several states, including New York, and concluded that "state
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1 regulators have not collected the type of data, primarily on title agents' costs and
 2 operations, needed to analyze premium prices and underlying costs."

3 78. Unchecked by regulatory review and insulated from competition,
 4 defendants have thus been able to collectively fix title insurance rates at
 5 supracompetitive levels and earn profits that vastly exceed those contemplated by
 6 the Insurance Department or that would have resulted in a free and open
 7 competitive market.

8 79. At the time of TIRSA's formation, the Insurance Department
 9 established 5 percent (of the total premium) as the level of profit to which title
 10 insurers are entitled. The Insurance Department is supposed to carefully analyze
 11 TIRSA's rate calculations, and, in particular, its revenue and cost information, to
 12 ensure that this 5 percent profit level is maintained and based on a reasonable
 13 premium. However, without the authority or ability to scrutinize agency
 14 commission costs, the Insurance Department has been unable to perform this
 15 function. As a result, defendants (through TIRSA) have been able to set artificially
 16 high title premiums and secure title profits far in excess of the 5 percent threshold.

17 80. Through an independent investigation conducted over the past several
 18 years, the New York State Attorney General found that for every dollar of
 19 insurance premium defendants collected, of the roughly 15 cents that supposedly
 20 accounts for the risk of loss, only 3 cents is paid out in claims. And, of the roughly
 21 85 cents that supposedly covers agency commissions, only between 8 and 11 cents
 22 goes to costs actually incurred by title agents in producing the title policy. These
 23 numbers show that title insurers' collectively fixed rates have resulted in profits
 24 that untethered to and vastly exceeded the costs of producing such policies.

25 81. The New York Attorney General's investigation further revealed that
 26 what was largely driving these numbers were the kickbacks and other financial
 27 inducements defendants were funneling to and through title agents to secure more
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1 business. As reported in the New York Insurance Department's 2006 hearing, one
 2 title agency's financial statements revealed that it spent more than \$1 million of
 3 these so-called "agency commissions" on items identified as "Christmas",
 4 "automobile expenses", "political contributions", "promotional expenses", and
 5 "travel and entertainment". These expenses are not even remotely related to the
 6 issuance of title insurance.

7 82. The Washington State Insurance Commissioner's October 2006 report
 8 found strikingly similar abuses in Washington. Violations were pervasive and the
 9 Commissioner concluded that consumers were paying too much as a result.

10 83. All of this "excess money" paid to title agents not only works to steer
 11 business to defendants. It also serves to boost defendants' own profits through the
 12 inflated revenues they obtain to cover these agency payments and through their
 13 ownership or management stake in many of these agencies.

14 84. Defendants are competitors in the sale of title insurance to consumers
 15 throughout the United States. These title insurers have agreed and engaged in
 16 concerted efforts to (i) collectively set and charge uniform and supracompetitive
 17 rates for title insurance, (ii) include in their calculated rate agency commission
 18 costs, (iii) embed within these costs payoffs, kickbacks, and other charges that are
 19 unrelated to the issuance of title insurance, and (iv) hide these supposed "costs"
 20 from regulatory scrutiny by funneling them to and through title agents over which
 21 the government agencies have no ability or authority to regulate.

22 85. The United States Government Accountability Office ("GAO") in its
 23 2007 report entitled "Actions Needed to Improve Oversight of the Title Insurance
 24 Industry and Better Protect Consumers" found several indicia of a lack of
 25 competition and questions about the reasonableness of prices including:

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- 1 • Consumers find it difficult to shop for title insurance, therefore,
2 they put little pressure on insurers and agents to compete based on
3 price;
- 4 • Title agents do not market to consumers, who pay for title
5 insurance, but to those in the position to refer consumers to
6 particular title agents, thus creating potential conflicts of interest;
- 7 • A number of recent investigations by HUD and state regulatory
8 officials have identified instances of alleged illegal activities with
9 the title industry that appear to reduce price competition and could
10 indicate excessive prices;
- 11 • As property values or loan amounts increase, prices paid for title
12 insurance by consumers appear to increase faster than insurers' and
13 agents' costs; and
- 14 • In states where agents' search and examination services are not
15 included in the premium paid by consumers, it is not clear that
16 additional amounts paid to title agents are fully supported by
17 underlying costs.

18 86. The GAO visited several states, including California, and found a lack
19 of regulatory oversight:

20 In the states we visited, we found that regulators did not
21 assess title agents' costs to determine whether they were
22 in line with premium rates; had made only limited efforts
23 to oversee title agents (including ABAs involving
24 insurers and agents); and, until recently, had taken few
25 actions against alleged violations of antikickback laws.

26 In part, this situation has resulted from a lack of
27 resources and limited coordination among different

1 regulators within states. On the federal level, authority
 2 for alleged violations of section 8 of RESPA, including
 3 those involving increasingly complex ABAs, is limited to
 4 seeking injunctive relief. Some state regulators
 5 expressed frustration with HUD's level of responsiveness
 6 to their requests for help with enforcement, and some
 7 industry officials said that RESPA rules regarding ABAs
 8 and referral fees need to be clarified. Industry and
 9 government stakeholders have proposed several
 10 regulatory changes, including RESPA reform,
 11 strengthened regulation of agents, a competitor right of
 12 action with no monetary penalty, and alternative title
 13 insurance models. [Id. at 41, footnotes omitted.]

14 **D. Competition Based on Kickbacks and Inducements but not
 15 Rates**

16 87. Having agreed to fix or stabilize prices in New York and other states
 17 where they overtly meet to promulgate rates, these same defendants then set out to
 18 do the same in other states.

19 88. In other words, as a direct result of these meetings where rates were
 20 agreed to, these same defendants agreed, either expressly or tacitly, to not compete
 21 on rates in other states as well. To compete on rates in other states could and
 22 would imperil their ability to maintain the agreed rate in states like New York.

23 89. As is the case in New York, a lack of regulatory authority over rates
 24 created an environment in which a conspiracy can and did succeed. No agency
 25 was examining why all the rates were virtually identical, and no agency was
 26 examining whether the costs associated with these premiums were reasonable.
 27 This is an environment which is conducive to price-fixing.

1 90. In California, there is a lack of regulatory authority and oversight over
 2 title insurance companies. The rates in California are not set as part of a deliberate
 3 state intervention and the state does not and cannot meaningfully renew or approve
 4 these rates. The rates at issue in this case went into effect without review.

5 **E. Other Indicators of a Lack of Competition and Conditions**

6 **Conducive to Collusive Rate Setting**

7 91. In addition to the uniformity of rates, other facts suggest that it is more
 8 plausible than not that rates have been set based on an agreement to fix prices.

9 92. In theory, the chain of title should be documented back to its historic
 10 grant of ownership centuries past. Fear about a possible title defect in the distant
 11 past is widely used as a justification by title agencies when convincing property
 12 buyers to purchase an owner policy in addition to the lender policy, which is
 13 mandatory to secure a mortgage. The title agency, however, saves much time and
 14 money when the search is limited to one or two transactions. They rely on the
 15 insurance policy to cover the remote chance of missing an earlier but still valid
 16 claim. If such a claim is asserted and survives the scrutiny of the title insurance
 17 company's legal department, the expected cost of compensation is likely to be less
 18 than the sum of added overhead costs of routinely tracing back every chain of title
 19 to the earliest registered owner in the distant past.

20 93. Title insurance Industry officials tend to justify the large proportion of
 21 the premium retained by the title abstract and settlement agency (from 60 to more
 22 than 90 percent) by the alleged high cost of title searching back into the distant
 23 past. In fact, a high proportion of non-commercial properties are searched only
 24 through the most recent transaction. No information is available as to what
 25 proportion of claims originate in the distant past. The industry has never published
 26 pertinent statistics. It would have a marketing incentive to publish these statistics
 27 if the risk were significant; that it has not published these statistics indicates that

1 the risk probably is only slightly greater than zero.

2 94. Many U.S. homes are being resold three or four times in twenty-five
 3 years. At each of these occasions, an abstract of title will be prepared on the basis
 4 of a more or less thorough review of the available title records, inheritance records,
 5 family records and records of past or current liens against a property. It is
 6 reasonable, therefore, to suspect that the risk of a title defect will decrease every
 7 time a property is sold.

8 95. Title searches have become less labor intensive, especially in large
 9 urban counties and cities. More and more of the information is available online.
 10 The statistical likelihood that a title default would be overlooked is a closely held
 11 industry secret, but it appears to be so small that many transactions are now insured
 12 on the basis of a search of the last owner's title history or a search into transactions
 13 that occurred during the last twenty-five to thirty-five years. The evidence is
 14 strong that the title insurance industry has achieved a remarkably high level of loss
 15 minimization.

16 96. Thus, the costs of production have decreased as has the risk of loss yet
 17 none of these factors has resulted in price competition at the consumer level.

18 97. There is a remarkable absence of rate changes by title insurers over the
 19 past five years, despite declining costs of production, increased number of
 20 transactions and increased revenue per transaction. During a period when costs per
 21 unit of production declined significantly, underwritten title companies and title
 22 insurers maintained excessive rates. The prices charged by title insurers and
 23 underwritten title companies were not and are not responsive to the changing costs
 24 of production or increasing revenue per transaction at a given set of rates. Again,
 25 this is indicia of an agreement not to compete based on price.

26 98. As noted, the title companies engage in illegal rebates and kickbacks
 27 where the title insurer or the underwritten title company provides money, free
 28

1 services or other things of value to a real estate agent, a lender or homebuilder in
 2 exchange for business referrals. These illegal rebates and kickbacks — a
 3 consequence of reverse competition — show that title insurance rates are
 4 supracompetitive and that some portion of the overcharge is passed from the
 5 underwritten title company or title insurer to the referrer of business.

6 99. A lack of competition and the ability to control prices is enhanced by
 7 the fact that there were few title insurer entrants over the period from 1995 through
 8 2005 and the number of title insurer groups declined as title insurers acquired other
 9 title insurers. There were few underwritten title company entrants over the 2000 to
 10 2005 period and new entrants were controlled business arrangements whose
 11 addition to the market did not result in greater price competition.

12 100. Access to title plants can be a barrier to entry, but a large barrier to
 13 entry exists due to the established relationships between the entities that can steer
 14 the consumer's title and escrow business and the entities who sell title insurance
 15 and escrow services.

16 101. The title insurance market is highly concentrated — a few title
 17 insurers account for insurance the vast majority of title insurance sales — at both
 18 the statewide level and at the county level in California. For example, three title
 19 insurer groups account for 77.4% of the market at a statewide level. At the county
 20 level, each individual market was highly concentrated. The GAO found that First
 21 American and Fidelity had a market share of 66 percent. Such a concentration
 22 enhances the ability of companies to fix prices.

23 102. The agreement not to compete based on price is also evidenced by the
 24 fact that no company has marketed its services to consumers, the ultimate
 25 purchasers of the product.

26 //
 27 //
 28 //

VIII. CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE SHERMAN ACT

103. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

104. Although the exact dates are unknown to plaintiff, it is herein alleged upon information and belief that beginning at least as early as March, 2004, and continuing thereafter to the present, defendants and their co-conspirators engaged in a contract, combination or conspiracy to unlawfully restrain trade and commerce in violation of Section 1 of the Sherman Act.

105. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which have been:

- (a) to fix, raise, maintain and stabilize the price of title insurance throughout the State of California;
 - (b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in the State of California; and
 - (c) to allocate and divide the market for title insurance throughout the State of California.

106. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California and is a per se violation of Section I of the Sherman Act.

107. Defendants' price-fixing, market allocation and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

108. Through their collective price-fixing, market allocation and division and manipulation of the regulatory process, defendants have harmed competition by charging consumers supracompetitive prices for title insurance in California, evidenced in part by the fact that the prices are uniformly higher than compared with the cost of providing the insurance.

109. The aforesaid combination and conspiracy has had the following effects among others:

- (a) price competition in the sale of title insurance has been suppressed, restrained and eliminated;
 - (b) prices for title insurance have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and
 - (c) purchasers of title insurance have been deprived of the benefit of free and open competition.

110. Plaintiff and Class members, as a proximate result of defendants' unlawful conduct in the California title insurance market, have suffered injury in that they paid supracompetitive rates for title insurance. Defendants' horizontal price fixing scheme, unimpeded by meaningful regulatory oversight, constitutes a per se violation of Section 1 of the Sherman Act. As a result, plaintiff and each member of the Class he represents, has been injured and damaged in an amount presently undetermined.

COUNT II

**VIOLATION OF CALIFORNIA BUSINESS
AND PROFESSIONS CODE §§ 16720, ET SEC.**

111. Plaintiff incorporates by reference all the preceding allegations as if fully set forth herein.

112. Defendants' acts, as alleged herein, are in violation of Federal and State antitrust laws and were carried out and effectuated within the State of

California.

113. Defendants, beginning no later than March, 2004 and continuing to the present, violated the Cartwright Act of California (Cal. Bus. & Prof. Code §§ 16720, et seq.).

114. As a direct result of defendants' unlawful conduct, plaintiff and Class members, have suffered injury in that they paid more for title insurance than they would have paid in the absence of the alleged antitrust violations and have suffered injury to their business and property.

COUNT III

CALIFORNIA'S BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.

115. Plaintiff incorporates by reference all of the preceding allegations as if fully set forth herein.

116. Plaintiff and Class members allege that defendants' statements and misrepresentations constitute unfair, unlawful and deceptive trade practices in violation California's UCL, Bus. & Prof. Code §§ 17200, et seq.

117. Defendants' illegal conduct, alleged herein, is ongoing and part of a larger pattern of conduct that permeates the title insurance industry. Plaintiff and Class members sustained injuries in the form of lost money or property, paying an inflated price for title insurance, as a direct result of defendants' conduct in violation of § 17200 of the California Business and Professions Code.

118. Plaintiff requests that this Court enjoin the defendants from continuing its unfair, unlawful, and deceptive practices. Plaintiff and Class members are entitled to full restitution and/or disgorgement of all revenue, earnings, profits, compensation, and benefits resulting from defendants' unlawful business acts, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

1 **COUNT IV**
 2 **UNJUST ENRICHMENT**

3 119. Plaintiff incorporates by reference all of the preceding allegations as if
 4 fully set forth herein.

5 120. This Cause of Action is pled in the alternative to all claims and/or
 6 causes of action at law.

7 121. Defendants have received a benefit from plaintiff and the Class
 8 members in the form of the prices plaintiff and the Class members paid for
 9 defendants' title insurance.

10 122. Defendants are aware of their receipt of the above-described benefit.

11 123. Defendants received the above-described benefit to the detriment of
 12 plaintiff and each of the other members of the Class.

13 124. Defendants continue to retain the above-described benefit to the
 14 detriment of plaintiff and the Class members.

15 125. As a result of defendants' unjust enrichment, plaintiff and the Class
 16 members have sustained damages in an amount to be determined at trial, and seek
 17 full disgorgement and restitution of defendants' enrichment, benefits, and ill-gotten
 18 gains acquired as a result of the unlawful or wrongful conduct alleged above.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, plaintiff demands:

21 A. That the alleged combination and conspiracy among the defendants
 22 and their co-conspirators be adjudged and decreed an unreasonable restraint of
 23 trade in violation of Section 1 of the Sherman Act;

24 B. That the Court declare that the premiums charged are excessive under
 25 state law and order damages;

26 C. That judgment be entered against defendants, jointly and severally,
 27 and in favor of plaintiff, and each member of the Class it represents, for threefold

1 the damages determined to have been sustained by plaintiff, and each member of
2 the Class it represents, together with the cost of suit, including a reasonable
3 attorneys' fee;

4 D. Each of the defendants, successors, assignees, subsidiaries and
5 transferees, and their respective officers, directors, agents and employees, and all
6 other persons acting or claiming to act on behalf thereof or in concert therewith, be
7 perpetually enjoined and restrained from, in any manner, directly or indirectly,
8 continuing, maintaining or renewing the aforesaid combination, conspiracy,
9 agreement, understanding or concert of action, adopting or following any practice,
10 plan, program, or design having a similar purpose or effect in restraining
11 competition; and

12 E. Other and further relief as may appear necessary and appropriate.

JURY TRIAL DEMANDED

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury for all claims alleged herein.

17 | Dated: March 20, 2008

LIM, RUGER & KIM, LLP

By:

Christopher Kim
Lisa J. Yang

**SCHIFFRIN BARROWAY TOPAZ &
KESSLER, LLP**

Alan R. Plutzik, Of Counsel

Robert M. Bramson, Of Counsel

2125 Oak Grove Road, Suite 120

Walnut Creek, CA 94598

Telephone: (925) 945-0770

Fax: (925) 945-8792

**SCHIFFRIN BARROWAY TOPAZ &
KESSLER, LLP**

Joseph H. Meltzer

Edward W. Ciolkos

Katherine B. Bornstein

Terence S. Ziegler

Cassandra A. Murphy

280 King of Prussia R

Radnor, PA 19087

Telephone: (610) 667-7706

Facsimile: (610) 667-7056

Attorneys for Plaintiff and the Proposed Class

LIM, RUGER & KIM, LLP

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dale S. Fischer and the assigned discovery Magistrate Judge is Andrew J. Wistrich.

The case number on all documents filed with the Court should read as follows:

CV08- 1897 DSF (AJWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Christopher Kim (Bar No. 082080)
 Lisa J. Yang (Bar No. 208971)
 LIM RUGER & KIM, LLP
 1055 West Seventh Street, Suite 2800
 Los Angeles, California 90017
 Telephone: (213) 955-9500

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

VINCENT LEON DAVIS, individually
 and on behalf of all others
 similarly situated.
 v.

PLAINTIFF

CASE NUMBER

CV08-01897

DSF/AJWx

(COMPLETE DEFENDANTS' LIST ATTACHED)

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): (Please see the list attached)

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Christopher Kim or Lisa J. Yang, whose address is Lim, Ruger & Kim, LLP, 1055 West Seventh Street, Suite 2800, Los Angeles, CA 90017. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

MAR 20 2008

Dated: _____

By: Natalie Yengoria
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

ATTACHMENT TO SUMMONS

Defendants,

FIDELITY NATIONAL FINANCIAL, INC., FIDELITY NATIONAL TITLE INSURANCE COMPANY, TICOR TITLE INSURANCE COMPANY, TICOR TITLE INSURANCE COMPANY OF FLORIDA, CHICAGO TITLE INSURANCE COMPANY, NATIONAL TITLE INSURANCE OF NEW YORK, INC., SECURITY UNION TITLE INSURANCE COMPANY, THE FIRST AMERICAN CORPORATION, FIRST AMERICAN TITLE INSURANCE COMPANY, UNITED GENERAL TITLE INSURANCE COMPANY, LANDAMERICA FINANCIAL GROUP, INC., COMMONWEALTH LAND TITLE INSURANCE COMPANY, LAWYERS TITLE INSURANCE CORPORATION, TRANSNATION TITLE INSURANCE COMPANY, STEWART TITLE GUARANTY COMPANY and STEWART TITLE INSURANCE COMPANY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Vincent Leon Davis		DEFENDANTS Fidelity National Finance, Inc., et al.		
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):		County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):		
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Christopher Kim/Lisa J. Yang LIM RUGER & KIM, LLP 1055 West Seventh Street, Suite 2800 Los Angeles, CA 90017		Attorneys (If Known)		
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)		
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4	
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	PTF DEF <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5	
		Citizen or Subject of a Foreign Country	PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6	
IV. ORIGIN (Place an X in one box only.)				
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge				
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)				
CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		MONEY DEMANDED IN COMPLAINT: \$		
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 28 U.S.C. §§ 1331, 1337(a) and 1367				
VII. NATURE OF SUIT (Place an X in one box only.)				
OTHER STATUTES	CONTRACT	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Apportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input checked="" type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 520 Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities /Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 625 Drug Related Seizure of Property	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 881	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land			FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property			<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: **CV08-01897**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.

VINCENT LEON DAVIS - Los Angeles

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

Check here if the U.S. government, its agencies or employees is a named defendant.

FIDELITY NATIONAL FINANCIAL, INC. - Florida

FIDELITY NATIONAL TITLE INSURANCE COMPANY - Florida

TICOR TITLE INSURANCE COMPANY - Florida

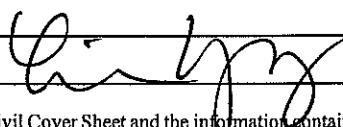
TICOR TITLE INSURANCE COMPANY OF FLORIDA - Florida

(See the attached for continuation of this list)

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Los Angeles

X. SIGNATURE OF ATTORNEY (OR PRO PER): 

Date 3-20-2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

ATTACHMENT TO CIVIL COVER SHEET (CV-71 (07/05))

- CHICAGO TITLE INSURANCE COMPANY - Chicago
- NATIONAL TITLE INSURANCE OF NEW YORK, INC. - New York
- SECURITY UNION TITLE INSURANCE COMPANY - Florida
- THE FIRST AMERICAN CORPORATION - Orange County, California
- FIRST AMERICAN TITLE INSURANCE COMPANY – Orange County, California
- UNITED GENERAL TITLE INSURANCE COMPANY – Los Angeles County, California
- LANDAMERICA FINANCIAL GROUP, INC. - Virginia
- COMMONWEALTH LAND TITLE INSURANCE COMPANY - Virginia
- LAWYERS TITLE INSURANCE CORPORATION – Connecticut
- TRANSNATION TITLE INSURANCE COMPANY - Virginia
- STEWART TITLE GUARANTY COMPANY - Texas
- STEWART TITLE INSURANCE COMPANY – New York

EXHIBIT 7

COPY

1 Michael D. Braun (167416)
2 BRAUN LAW GROUP, P.C.
3 12304 Santa Monica Blvd., Suite 109
4 Los Angeles, CA 90025
5 Tel: (310) 442-7755
6 Fax: (310) 442-7756
7 E-mail: service@braunlawgroup.com

5 | Liaison Counsel for Plaintiff

6 Loren Kieve (56280)
7 KIEVE LAW OFFICES
8 50 California Street, Suite 1500
9 San Francisco, CA 94111
Tel: (415) 364-0060
E-mail: lk@kievelaw.com

Christopher J. Gray
LAW OFFICE OF CHRISTOPHER J.
GRAY, P.C.
460 Park Avenue, 21ST Floor
New York, NY 10022
Tel: (212) 838-3221
E-mail: gray@cjgraylaw.com

10 Counsel for Plaintiff
11 [Additional counsel listed on signature page]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

14 DR. RAJNIKANT KOTHARI, on
Behalf of Himself,

CASE NO.: SACV08-00440 DOC (RNBx)

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

17 FIRST AMERICAN TITLE
18 INSURANCE COMPANY,
19 FIDELITY NATIONAL TITLE
INSURANCE COMPANY,
20 CHICAGO TITLE INSURANCE
COMPANY, TICOR TITLE
INSURANCE COMPANY,
21 FIDELITY NATIONAL FINANCE,
INC., UNITED GENERAL TITLE
INSURANCE COMPANY, FIRST
AMERICAN CORPORATION,
23 COMMONWEALTH LAND TITLE
INSURANCE COMPANY,
24 LAWYERS TITLE INSURANCE
CORPORATION, LANDAMERICA
25 FINANCIAL GROUP, INC.,
STEWART TITLE GUARANTY
COMPANY, and STEWART TITLE
26 INSURANCE COMPANY.

Defendants.

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1 Plaintiff Dr. Rajnikant Kothari (“plaintiff”), on behalf of himself and all others
 2 similarly situated, upon knowledge with respect to his own acts and upon
 3 information and belief with respect to all other matters, alleges as follows:

4 1. Plaintiff brings this action under Section 1 of the Sherman Act and the
 5 statutes of the State of California to enjoin defendants’ illegal price-fixing activity
 6 and recover damages for the illegal overcharges the Class has paid in connection
 7 with the unlawful activity by defendants alleged herein.

8 **JURISDICTION AND VENUE**

9 2. Plaintiff brings this action under Section 16 of the Clayton Act, 15
 10 U.S.C. § 26, to prevent and restrain violations of Section 1 of the Sherman Act, 15
 11 U.S.C. § 1, and for damages under Section 4 of the Clayton Act, 15 U.S.C. § 15.
 12 This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1337.

13 3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and
 14 15 U.S.C. § 22 because each defendant is a corporation that is found or transacts
 15 business in this district, and because a substantial portion of the affected trade and
 16 commerce described herein has been carried out in this district.

17 4. The violations of antitrust law alleged herein have substantially affected
 18 interstate commerce. Defendants sell title insurance throughout the United States
 19 collecting billions of dollars in premiums annually.

20 **THE PARTIES**

21 5. Plaintiff is a resident of Canton, Ohio. During the Class Period as
 22 hereinafter defined plaintiff purchased title insurance at a price that was artificially
 23 high because of defendants’ unlawful price-fixing agreement.

24 6. The Fidelity family of title insurance companies (collectively,
 25 “Fidelity”)-- which includes defendant Fidelity National Title Insurance Co.
 26 (“Fidelity Title”), defendant Chicago Title Insurance Company (“Chicago Title”),
 27 defendant Ticor Title Insurance Company (“Ticor Title”), and their affiliates – is
 28 engaged in selling title insurance to purchasers of commercial and residential real

1 estate throughout the United States, including California. Nationally, Fidelity
2 accounts for approximately 27 percent of title premiums, which in 2006 amounted to
3 roughly \$4.6 billion. Fidelity Title, Chicago Title, and Ticor Title were founding
4 members of TIRSA (as discussed below).

5 7. Fidelity Title, Chicago Title, Ticor Title, and their affiliates are wholly-
6 owned and controlled by defendant Fidelity National Finance, Inc. (“Fidelity
7 National”), a Delaware corporation headquartered in Jacksonville, Florida. Through
8 its subsidiaries, Fidelity National is a provider of title insurance, specialty insurance,
9 and claims management services. Fidelity engaged in the conduct challenged herein
10 with the approval and assent of Fidelity National.

11 8. The First American family of title insurance companies (collectively,
12 “First American”) – which includes defendant First American Title Insurance
13 Company (“First American Title”) and defendant United General Title Insurance
14 Company (“United General Title”), and their affiliates – is engaged in selling title
15 insurance to purchasers of commercial and residential real estate throughout the
16 United States, including California. Nationally, First American accounts for
17 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8
18 billion. First American Title and United General Title were founding members of
19 TIRSA.

20 9. First American Title, United General Title, and their affiliates are
21 wholly-owned and controlled by defendant First American Corporation (“FAC”), a
22 California corporation headquartered in Santa Ana, California. Through its
23 subsidiaries, FAC is a provider of title insurance, business information, and related
24 products and services. FAC had 2006 revenues of roughly \$8.5 billion. First
25 American engaged in the conduct challenged herein with the approval and assent of
26 FAC.

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1 10. The LandAmerica family of title insurance companies (collectively,
 2 "LandAmerica") – which includes defendant Commonwealth Land Title Insurance
 3 Company ("Commonwealth"), defendant Lawyers Title Insurance Corporation
 4 ("Lawyers Title"), and their affiliates – is engaged in selling title insurance to
 5 purchasers of commercial and residential real estate throughout the United States,
 6 including California. Nationally, LandAmerica accounts for approximately 19
 7 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion.
 8 Commonwealth and Lawyers Title were founding members of TIRSA.

9 11. Commonwealth and Lawyers Title are wholly-owned and controlled by
 10 defendant LandAmerica Financial Group, Inc. ("LAFG"), a Virginia corporation
 11 headquartered in Glen Allen, Virginia. Through its subsidiaries, LAFG is a provider
 12 of title insurance and other products and services that facilitate the purchase, sale,
 13 transfer, and financing of residential and commercial real estate. LAFG had 2006
 14 revenues of roughly \$4 billion. LandAmerica engaged in the conduct challenged
 15 herein with the approval and assent of LAFG.

16 12. The Stewart family of title insurance companies (collectively,
 17 "Stewart") – which includes defendant Stewart Title Guaranty Company and,
 18 defendant Stewart Title Insurance Company, and their affiliates – is engaged in
 19 selling title insurance to purchasers of commercial and residential real estate
 20 throughout the United States, including California. Nationally, Stewart accounts for
 21 approximately 12 percent of title premiums, which in 2006 amounted to roughly \$2
 22 billion. Stewart was a founding member of TIRSA.

23 13. Together, Fidelity, First American, LandAmerica and Stewart account
 24 for more than 85 percent of title premiums in the United States, which in 2006
 25 amounted to roughly \$14.5 billion.

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1 14. Significant nonparty TIRSA is a voluntary association of title insurers
2 licensed as a rate service organization pursuant to Article 23 of the Insurance Law of
3 the State of New York. TIRSA maintains its offices in New York City, which until
4 recently were located at the same New York address of defendant Fidelity Title.

5 15. TIRSA annually compiles from its members statistical data relating to
6 their title insurance premiums, losses and expenses and submits this information in
7 aggregate form to the New York Insurance Department. TIRSA also prepares and
8 submits the New York Title Insurance Rate Manual which sets forth title rates to be
9 charged and rules to be followed by TIRSA's members. The Insurance Department
10 has never objected to any of the rates TIRSA has collectively set.

11 16. TIRSA's membership is comprised of defendant insurers and all other
12 title insurers that are licensed to issue policies in New York. Currently, Fidelity,
13 First American, LandAmerica, and Stewart collectively represent 14 of TIRSA's 22
14 members. As such, they comprise a majority voting block which, according to
15 TIRSA's by-laws, allows them to control the operations of TIRSA and, in particular,
16 TIRSA's collective rate setting activity.

DETAILED FACTUAL ALLEGATIONS

18 | A. The Business of Title Insurance

17. Title insurance serves an important purpose. It protects the purchaser of
a property from any unidentified defects in the title that would in any way interfere
with the full and complete ownership and use of the property and with the ultimate
right to resell the property. Title insurance is required by lenders in most residential
and commercial real estate transactions.

24 18. Despite the importance and high cost of title insurance, consumers have
25 little understanding of the product, the purpose it serves, and the reasonableness of
26 the price they pay for it. They also exercise little discretion in choosing the title
27 insurer from which they purchase the insurance. That decision is typically made for
28 them by their lawyer, mortgage broker, lender, or realtor. Consequently, for most

1 purchasers, the cost of title insurance is largely overlooked and seldom, if ever,
2 challenged. Most consumers do not even become aware of the price they will pay
3 and to which insurer they will pay it until the actual closing of the real estate
4 transaction. Usually the consumer does not “shop around” or negotiate with respect
5 to the price of the insurance coverage.

6 19. Due to this lack of a competitive environment, title insurers have little
7 or no incentive to compete with respect to price.

8 20. The most effective way for a particular title insurer to get business is to
9 encourage those making the purchasing decisions – typically lawyers, brokers or
10 lenders servicing a customer – to steer business to that insurer. One way to so
11 motivate these third-party representatives is through kickbacks in the form of
12 finder’s fees, gifts, and other financial enticements. Therefore, it is higher pricing
13 (which allows for payments to referring parties), not lower pricing or competing on
14 the basis of price, that provides the best way for title insurers to compete and
15 increase their business.

16 21. Premiums for title insurance cover both the risk of loss to the
17 underwriter and “agency commissions.” Unlike property insurance, title insurance
18 carries with it a very limited risk of loss to the insurer. That is because the title
19 insurance protects against *prior* events that cause defects in title. With a proper
20 search and examination of prior ownership records, any such defects can and almost
21 always are readily identified and excluded from the policy’s coverage.
22 Consequently, the average claim payout on a title insurance policy amounts to only
23 about 5 percent of the total premium collected. This is very different from property
24 coverage (such as auto and home insurance) – which protects against *future*
25 occurrences over which the insurer has little to no control – where the average claim
26 payout amounts to about 80 percent of the total premium.

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1 22. The “agency commissions” component of the title insurance rate covers
 2 payments made to title agents. Defendants have an ownership or management stake
 3 in many of the title agencies to which these payments are made. A small portion of
 4 these payments is for the search and exam of prior ownership records of the property
 5 being purchased to identify any liens, encumbrances, burdens, exclusions, or other
 6 defects in the title. The search and exam function does not involve the spreading or
 7 underwriting of risk and title insurers typically outsource this task to title agents.

8 23. The remainder, and by far the bulk, of the agency commissions are
 9 comprised of costs unrelated to the issuance of title insurance. These costs include
 10 kickbacks and other financial inducements title insurers provide to title agents and
 11 indirectly (through title agents) to the lawyers, brokers, and lenders who, in reality,
 12 are the ones deciding which title insurer to use. These payments have nothing to do
 13 with the issuance of title insurance and are made by title insurers merely to inflate
 14 their revenues and steer business their way.

15 24. Under TIRSA’s collective rate setting regime, roughly 85 percent of the
 16 total title insurance premium is based on the so-called “costs” associated with the
 17 payment of agency commissions. Only 15 percent is based on costs associated with
 18 the risk of loss. TIRSA publishes its final calculated title rates in the New York
 19 Title Insurance Rate Manual. These rates are tied to the value of the property being
 20 insured. This is so despite the fact that the costs associated with agency
 21 commissions are entirely unrelated to the value of the property. Indeed, agency
 22 kickbacks and enticements have little to do with producing a particular title policy
 23 and provide no value – proportional to property value or otherwise – to the
 24 consumer. Even search and exam costs are unrelated to property value. They instead
 25 depend on the age of the property, the complexity of the ownership history, and the
 26 accessibility of prior ownership records.

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1 B. TIRSA

2 25. Prior to TIRSA, the New York Board of Title Underwriters (“NYBTU”)
 3 served as the title insurance rate-setting body in New York. NYBTU, along with the
 4 title insurance rate setting bureaus in many other states, was disbanded in the mid-
 5 1980’s in the wake of a Federal Trade Commission (“FTC”) challenge to the
 6 collective rate setting activity of many of these associations. The FTC’s challenge
 7 culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992), where the Supreme
 8 Court held that to avoid *per se* illegal price fixing liability, the rate setting activity of
 9 these rating bureaus must be actively supervised by the state.

10 26. In *Ticor*, like here, the FTC focused its challenge on agency
 11 commissions. The FTC contended that the respective state insurance departments
 12 merely rubber-stamped this portion of the collectively fixed rates without any
 13 independent review or analysis of their reasonableness or cost justification. The
 14 Supreme Court agreed with the FTC that this kind of limited state oversight was not
 15 sufficient. Rather, to avoid illegal price-fixing liability, the state insurance
 16 department has to “exercise[] sufficient independent judgment and control so that the
 17 details of the rates or prices have been established as a product of deliberate state
 18 intervention, not simply by agreement among private parties.” *Ticor*, 504 U.S. at
 19 634-35.

20 27. Following the Supreme Court’s instruction in *Ticor*, the Third Circuit on
 21 remand in *Ticor Title Ins. Co. v. FTC*, 998 F. 2d 1129 (3d Cir. 1993), upheld the
 22 FTC’s finding that the collective rate-setting of certain state rating bureaus was
 23 improper because it was not actively supervised by the state. According to the circuit
 24 court, “[t]he Supreme Court plainly instructed us that a state’s rubber stamp is not
 25 enough. Active supervision requires the state regulatory authorities’ independent
 26 review and approval.” *Id.* at 1139.

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1 28. Defendants formulated TIRSA's first rate manual and procedure soon
2 after the Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a
3 rate-setting scheme to get around the rigors of state oversight required by *Ticor*.
4 They have done so by calculating a single rate that comprises both risk and agency
5 commission costs and by outsourcing to title agents the agency commission costs. In
6 this way, defendants avoid providing the Insurance Department with any detailed
7 breakout or backup for the bulk of the costs that make up their collectively fixed
8 rates.

9 29. TIRSA merely submits an aggregated figure that is supposed to
10 represent the total agency commission costs. Embedded within this figure is the vast
11 quantity of dollars that are funneled to and through the title agencies as kickbacks,
12 financial inducements and other costs unrelated to the issuance of title insurance.
13 Defendants' design in all of this has been to effectively "hide" the cost basis for their
14 artificially high and collectively fixed title insurance premiums from the regulatory
15 scrutiny that *Ticor* demands.

16 30. There is no provision under the Insurance Law for TIRSA to include in
17 its collectively fixed rates kickbacks and other agency commission payments
18 unrelated to the issuance of title insurance. Indeed, the Insurance Department has
19 publicly stated that it lacks the authority to review any agency commission payments.
20 It has likewise recognized that defendants' outsourcing of agency commission costs
21 has prevented it from performing a meaningful review of TIRSA's calculated rates.
22 This was made clear at a November 2006 public hearing the Insurance Department
23 held – the first in 15 years – where it questioned TIRSA and its members on
24 TIRSA's failure to provide the Insurance Department with any backup or detail for
25 agency commissions. Further, at the hearing the Insurance Department conceded
26 that it could not properly evaluate TIRSA's rates without access to detailed
27 information concerning agency commissions that TIRSA does not provide.

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1 31. The Insurance Department's recognition that it is not properly
2 supervising TIRSA's rate-setting activity is consistent with the April 2007 findings
3 of the U.S. Government Accountability Office ("GAO") that the title insurance
4 industry is in dire need of greater state regulation. The GAO studied the industry
5 conditions of several states, including New York, and concluded that "state
6 regulators have not collected the type of data, *primarily on title agents' costs and*
7 *operations*, needed to analyze premium prices and underlying costs." (emphasis
8 added)

9 32. To remedy this failing, GAO has proposed, among other things: 1) strengthening the regulation of title agents through means such as establishing
10 meaningful requirements of capitalization, licensing, and continuing education; and
11 2) improving the oversight of title agents through more detailed audits and the
12 collection of data that would allow in-depth analyses of agents' costs and revenues.

14 33. Unchecked by regulatory review and insulated from competition,
15 defendants have thus been able to collectively fix title insurance rates at
16 supracompetitive levels and earn profits in New York that vastly exceed those
17 contemplated by the Insurance Department or that would have resulted in a free and
18 lawfully operating competitive market.

19 C. Defendants' Agreement Not to Compete
20 on The Price of Title Insurance in California

21 34. The title insurance market in California consists of a dozen carriers,
22 ranging in size from regional companies to national affiliates. However, the market
23 is dominated by four groups of affiliated companies which, combined, sell over 90
24 percent of the title insurance policies sold in California and which own and control
25 the title plants in many California counties that every title insurer must rely on in
26 order to issue title policies.

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1 35. Title companies, in marked contrast to property, casualty, life and other
2 traditional insurance carriers, choose not to market their products directly to the
3 consumers who pay for them. Instead, the title insurance industry operates on what
4 is termed a "reverse competition" mode. Reverse competition means that title
5 companies solicit business referrals from the other major players in the home
6 purchase scenario - real estate agents and agencies, banks, lenders, builders,
7 developers and others: middlemen or go-betweens. The title companies pay
8 middlemen for these referrals in the form of direct payments, advertising expenses,
9 junkets, parties and other kick-backs and inducements.

10 36. Reverse competition, as the term suggests, isn't a model that benefits
11 consumers through market-driven forces. In fact, consumers are bypassed
12 completely as title companies spend nearly all of their marketing budgets "wining
13 and dining" real estate agents, banks, lenders, builders, developers and others in an
14 effort to convince these middlemen to steer their home-buying clients to their
15 companies for their title insurance needs.

16 37. In some of the major markets in the United States, these same title
17 insurers collectively meet, and jointly set rates and file these rates with the applicable
18 state insurance authority. The rates are not subject to any meaningful review or
19 regulation. The companies agree to fix the price of title insurance far in excess of the
20 risk and loss experience associated with such insurance. As a result of the joint
21 agreement as to rates, competition is relegated to the middleman.

22 38. As a result of their joint rate setting and agreement, no company
23 competes on price to the consumer.

24 39. Having agreed to fix prices in states where joint rate setting occurs, the
25 companies agreed to not compete based on price to the consumer in other states,
26 including California, where regulation of filed rates is lax or non-existent. Thus, they
27 agreed to set rates at supracompetitive prices and to compete based on offering
28 inducements to middlemen.

1 40. In California, in three successive reports, the Office of the Insurance
2 Commissioner ("OIC") has found an "astonishing number" of such inducements that
3 are in violation of state law. However, the OIC does not actively oversee or regulate
4 rates, and, in fact, does not by its own admission have the power to do so. The
5 absence of regulation has allowed collusive behavior and excessive rates.

6 41. In addition to paying inducements and kick-backs, the title companies
7 and their agents divide the market of real-estate middlemen through the use of
8 Affiliated Business Arrangements ("ABAs"), wherein the dominant real estate
9 brokers purchase significant ownership stakes in favored title insurance affiliates.
10 The real estate brokers then reward their associates for using the preferred title
11 insurance providers and lock-out independent title insurers.

12 42. The GAO visited several states, including California, and found a lack
13 of regulatory oversight, as stated in a report:

14 In the states we visited, we found that regulators did not assess title
15 agents' costs to determine whether they were in line with premium
16 rates; had made only limited efforts to oversee title agents (including
17 ABAs involving insurers and agents); and, until recently, had taken
18 few actions against alleged violations of antikickback laws. In part,
19 this situation has resulted from a lack of resources and limited
20 coordination among different regulators within states. On the federal
21 level, authority for alleged violations of section 8 of RESPA,
22 including those involving increasingly complex ABAs, is limited to
23 seeking injunctive relief. Some state regulators expressed frustration
24 with HUD's level of responsiveness to their requests for help with
25 enforcement, and some industry officials said that RESPA rules
26 regarding ABAs and referral fees need to be clarified. Industry and
27 government stakeholders have proposed several regulatory changes,
28 including RESPA reform, strengthened regulation of agents, a

1 competitor right of action with no monetary penalty, and alternative
2 title insurance models.

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4 43. Having agreed to fix or stabilize prices in New York and other states
5 where they covertly meet to promulgate rates, these same defendants then set out to
6 do the same in other states. In other words, as a direct result of these meetings
7 where rates were agreed to, these same defendants agreed, either expressly or tacitly,
8 not to compete on rates in other states as well. To compete on rates in other states
9 could and would imperil their ability to maintain the agreed rate in states like New
10 York.

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12 44. As is the case in New York, a lack of regulatory authority over rates
13 created an environment in which a conspiracy can and did succeed. No agency was
14 examining why all the rates were virtually identical, and no agency was examining
15 whether the costs associated with these premiums were reasonable. This is an
environment that is conducive to price fixing.

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17 45. In addition to the uniformity of rates, other facts suggest that it is more
18 plausible than not that rates have been set based on an agreement to fix prices. In
19 theory, the chain of title should be documented back to its historic grant of
20 ownership centuries in the past. Fear about a possible title defect in the distant past
21 is widely used as a justification by title agencies when convincing property buyers to
22 purchase an owner policy in addition to the lender policy, which is mandatory to
23 secure a mortgage. The title agency, however, saves much time and money when the
24 search is limited to one or two transactions. They rely on the insurance policy to
25 cover the remote chance of missing an earlier but still-valid claim. On balance, the
26 expected cost of compensation in the cases in which a title defect materializes is
27 likely to be less than the sum of added overhead costs of routinely tracing back every
chain of title to the earliest registered owner in the distant past.

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1 46. Title insurance industry officials tend to justify the large proportion of
2 the premium retained by the title abstract and settlement agency (from 60 to more
3 than 90 percent) by the alleged high cost of title searching back into the distant past.
4 In fact, a high proportion of noncommercial properties are searched only through the
5 most recent transaction. No information is available as to what proportion of claims
6 originate in the distant past.

7 47. Many U.S. homes are being resold three or four times in twenty-five
8 years. At each of these occasions, an abstract of title will be prepared on the basis of
9 a more or less thorough review of the available title records, inheritance records,
10 family records and records of past or current liens against a property. It is
11 reasonable, therefore, to suspect that the risk of a title defect will decrease every time
12 a property is sold.

13 48. Title searches have become less labor intensive, especially in large
14 urban counties and cities. More and more of the information is available online. The
15 statistical likelihood that a title default would be overlooked is a closely held
16 industry secret, but it appears to be so small that many transactions are now insured
17 on the basis of a search of the last owner's title history or a search into transactions
18 that occurred during the last twenty-five to thirty-five years.

19 49. The available evidence strongly suggests that the title insurance
20 industry has achieved a remarkably low level of loss. Yet, despite lowered risks of
21 loss and transaction costs, the defendants have not engaged in price competition at
22 the consumer level.

23 50. There is a remarkable absence of rate changes by title insurers over the
24 past five years, despite declining costs of production, increased number of
25 transactions and increased revenue per transaction, during a period when costs per
26 unit of production declined significantly. This failure to compete on price and
27 absence of material rate changes are indicia of an agreement not to compete based on
28 price.

1 51. The title insurance market is highly concentrated - a few title insurers
2 account for the vast majority of title insurance sales - at both the statewide level and
3 at the county level in California. For example, three title insurer groups account for
4 77.4% of the market at a statewide level. At the county level, each individual market
5 was highly concentrated. Such a concentration enhances the ability of defendants to
6 fix prices

CLASS ACTION ALLEGATIONS

8 52. Plaintiff brings this action as a class action under rule 23(b)(3) of the
9 Federal Rules of Civil Procedure for violations of Section 1 of the Sherman Act, 15
10 U.S.C. § 1. The Rule (b)(3) Class is comprised of all consumers who purchased title
11 insurance in California from defendants during the fullest period permitted by the
12 applicable statute of limitations.

13 53. Plaintiff, along with all other members of the Rule (b)(3) Class, was
14 injured as a result of paying supracompetitive prices for title insurance in California.
15 These supracompetitive prices were achieved as a result of defendants' illegal price-
16 fixing activities. Defendants are jointly and severally liable for the illegal price-
17 fixing activities alleged herein.

18 54. Members of the (b)(3) Class include hundreds of thousands, if not
19 millions, of consumers. Class members are so numerous that their joinder would be
20 impracticable.

21 55. Plaintiff also brings this action as a class action under Rule 23(b)(2) of
22 the Federal Rules of Civil Procedure, for violations of Section 1 of the Sherman Act,
23 15 U.S.C. § 1 and the California statutes. The Rule (b)(2) Class includes all
24 members of the (b)(3) Class, and all consumers who are threatened with injury by the
25 anticompetitive conduct detailed herein.

26 56. Defendants have acted, continued to act, refused to act and continued to
27 refuse to act on grounds applicable to the Rule (b)(2) Class, thereby making
28 appropriate final injunctive relief with respect to the Rule (b)(2) Class as a whole.

1 57. Members of the Rule (b)(2) Class include hundreds of thousands, if not
2 millions, of consumers. They are so numerous that their joinder would be
3 impracticable.

4 58. Common questions of law and fact exist with respect to all Class
5 members and predominate over any questions solely affecting individual Class
6 members. Among the questions of law or fact common to the class are the
7 following:

- 8 a. Whether defendants have engaged in the alleged illegal price-
9 fixing activity;
- 10 b. The duration and scope of defendants' alleged illegal price-fixing
11 activity;
- 12 c. Whether defendants' alleged illegal price-fixing has caused
13 higher prices to plaintiff and other purchasers of title insurance in
14 California; and
- 15 d. The extent to which defendants' unlawful activities artificially
16 inflated title insurance rates.

17 59. Plaintiff does not have any conflict of interest with other Class
18 members. Plaintiff's claims are typical of the claims of the Class and plaintiff will
19 fairly and adequately represent the interests of the Class. Plaintiff has retained
20 counsel competent and experienced in class action and other complex litigation to
21 represent the Class.

22 60. This action is superior to any other method for the fair and efficient
23 adjudication of this legal dispute since joinder of all members is not only
24 impracticable, but impossible. The damages suffered by certain members of the
25 Class are small in relation to the expense and burden of individual litigation and
26 therefore it is highly impractical for such Class members to seek redress for damages
27 resulting from defendants' anticompetitive conduct.

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1 61. There will be no extraordinary difficulty in the management of the Class
2 action.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR PER SE PRICE FIXING

(Sherman Act Section I – *Per Se* Unlawful Horizontal Price-Fixing)

7 62. Plaintiff repeats and realleges each and every allegation of this
8 complaint as if fully set forth herein.

9 63. Defendants have entered into a continuing illegal contract, combination,
10 or conspiracy in restraint of trade, the purpose and effect of which is to fix and
11 maintain supracompetitive prices to consumers for title insurance in California and
12 elsewhere. This contract, combination, and conspiracy is illegal *per se* under Section
13 1 of the Sherman Act, 15 U.S.C. § 1.

14 64. Defendants' contract, combination, or conspiracy is comprised of
15 defendants' efforts and agreement to (i) collectively fix uniform and
16 supracompetitive rates for title insurance in California and other states; (ii) include in
17 their calculated rates agency commission costs; (iii) embed within these costs
18 payoffs, kickbacks, and other charges to title agents that are unrelated to the issuance
19 of title insurance; (iv) hide these supposed costs from regulatory scrutiny by
20 funneling them to and through title agents; and (v) agree, either expressly or tacitly,
21 not to compete on premium rates for title insurance in the State of California.

22 65. Defendants' contract, combination, or conspiracy has caused substantial
23 anticompetitive effects in the title insurance market. It has done so by causing
24 plaintiff, and other purchasers of title insurance in California, to pay significantly
25 more for title insurance than they would have in the absence of defendants' illegal
26 activity.

1 66. As a result of these violations of Section 1 of the Sherman Act, plaintiff
2 and the purported Class have been injured in their business and property in an
3 amount not presently known, but which is, at a minimum, millions dollars, prior to
4 trebling.

5 67. Such violations and the effects thereof are continuing and will continue
6 unless injunctive relief is granted. Plaintiff has no adequate remedy at law.

7 **AS AND FOR A SECOND CAUSE OF ACTION**

8 **AGAINST ALL DEFENDANTS FOR VIOLATION OF**
9 **CAL. BUS. AND PROF. CODE §§ 16720 ET SEQ.**

10 68. Plaintiff repeats and realleges each of his allegations as though fully set
11 forth herein.

12 69. Defendants' conduct as set forth above is in violation of the Cartwright
13 Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

14 70. As a direct result of defendants' unlawful acts plaintiff and members of
15 the Class have paid artificially inflated prices for title insurance and have suffered
16 injury to their business and property.

17 **AS AND FOR A THIRD CAUSE OF ACTION**

18 **AGAINST ALL DEFENDANTS FOR VIOLATION OF**
19 **CAL. BUS. AND PROF. CODE §§ 17200 ET SEQ.**

20 71. Plaintiff repeats and realleges each of his previous allegations as though
21 fully set forth herein.

22 72. Defendants' statements and representations constitute unfair, unlawful
23 and deceptive trade practices in violation of the UCL, Bus. & Prof. Code §§ 17200,
24 *et seq.*

25 73. All of the wrongful conduct alleged herein occurred and continues to
26 occur in the conduct of defendants' business. Defendants' wrongful conduct is part
27 of a pattern or generalized course of conduct that is repeated in the State of
28 California on hundreds, if not thousands, of occasions daily.

1 74. Plaintiff has suffered injury in fact and has lost money or property as a
2 result of defendants' unfair, unlawful and/or deceptive practices by paying a higher
3 price for title insurance than he would or should have absent the conduct complained
4 of.

5 75. Plaintiff requests that this Court enter such orders or judgment as may
6 be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or
7 deceptive practices, to restore to any person in interest any money which may have
8 been acquired by means of such unfair competition and to disgorge any profits
9 realized by defendants as a result of their unfair, unlawful and/or deceptive practices,
10 as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for
11 such other relief as set forth in the Prayer for Relief.

**AS AND FOR A FOURTH CAUSE OF ACTION
FOR UNJUST ENRICHMENT**

15 ||| 76. Plaintiff incorporates by reference the preceding allegations.

16 77. This Cause of Action is pled in the alternative to all claims and/or
17 causes of action at law.

18 78. Defendants have received a benefit from plaintiff and the Class
19 members in the form of the prices plaintiff and the Class members paid for
20 defendants' title insurance.

21 ||| 79. Defendants are aware of their receipt of the above-described benefit.

22 80. Defendants received the above-described benefit to the detriment of
23 plaintiff and other members of the Class.

24 81. Defendants continue to retain the above-described benefit to the
25 detriment of plaintiff and the Class members.

26 82. As a result of defendants' unjust enrichment, plaintiff and the Class
27 members have sustained damages in an amount to be determined at trial and seek full
28 disgorgement and restitution

DEMAND FOR JURY TRIAL

83. Plaintiff demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, plaintiff and the Class request the following relief:

- A. That the Court determine that this action is a proper class action, certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as class counsel;
 - B. That the Court declare, adjudge, and decree that defendants have committed the violations of federal law alleged herein;
 - C. That defendants, their directors, officers, employees, agents, successors, and assigns be permanently enjoined and restrained from, in any manner, directly or indirectly, unlawfully fixing or maintaining their title insurance rates at supracompetitive levels, and committing any other violations of Section 1 of the Sherman Act, the California Statutes, and/or of other laws having a similar purpose and effect;
 - D. That the Court award damages sustained by Class members from defendants' violations of Section 1 of the Sherman Act in an amount to be proven at trial, to be trebled according to law, plus interest (including prejudgment interest), to compensate them for the overcharges they incurred;

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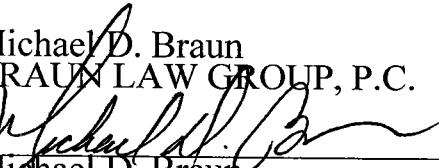
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1 E. That the Court award the Class attorneys' fees and costs of suit , and
2 grant such other and further relief as the Court may deem just and
3 proper.
4

5 Dated: April 23, 2008

6 By:

Michael D. Braun
BRAUN LAW GROUP, P.C.


Michael D. Braun
12304 Santa Monica Blvd., Suite 109
Los Angeles, CA 90025
Tel: (310) 442-7755
Fax: (310) 442-7756
E-mail: service@braunlawgroup.com

10 **Liaison Counsel for Plaintiff**

11 Loren Kieve
12 KIEVE LAW OFFICES
13 50 California Street, Suite 1500
14 San Francisco, CA 94111
15 Tel: (415) 364-0060
16 Fax: (415) 439-5377
17 E-mail: lk@kievelaw.com

18 Christopher J. Gray
19 LAW OFFICE OF CHRISTOPHER J. GRAY,
20 P.C.
21 460 Park Avenue, 21ST Floor
22 New York, NY 10022
23 Tel: (212) 838-3221
24 Fax: (212) 508-3695
25 E-mail: gray@cjgraylaw.com

26 Krishna B. Narine
27 LAW OFFICE OF KRISHNA B. NARINE
28 2600 Philmont Avenue
Huntingdon Valley, PA 19006
Tel: (215) 914-2460
Fax: (215) 914-2462
E-mail: [kumarine@kbnlaw.com](mailto:knarine@kbnlaw.com)

29 Louis F. Burke
30 E-mail: lburke@lfblaw.com
31 Leslie Wybiral
32 E-mail: ewybiral@lfblaw.com
33 LOUIS F. BURKE, P.C.
34 460 Park Avenue, 21ST Floor
35 New York, NY 10022
36 Tel: (212) 682-1700
37 Fax: (212) 808-4280

Samuel D. Edwards
E-mail: sedwards@sselaw.com
Kirk G. Smith
E-mail: ksmith@sselaw.com
~~SHEPHERD SMITH & EDWARDS LLP~~
1010 Lamar Street, Suite 900
Houston, TX 77002
Tel: (713) 227-2400
Fax: (713) 227-7215

Counsel for Plaintiff

EXHIBIT 8

FILED

1 GUIDO SAVERI (22349) *guido@saveri.com*
 2 R. ALEXANDER SAVERI (173102) *rick@saveri.com*
 3 CADIO ZIRPOLI (179108) *cadio@saveri.com*
 4 SAVERI & SAVERI, INC.
 5 111 Pine Street, Suite 1700
 San Francisco, CA 94111-5619
 Telephone: (415) 217-6810
 Facsimile: (415) 217-6813

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LOS ANGELES

By _____

6 JULIO J. RAMOS (189944) *ramosfortrustee@yahoo.com*
 7 LAW FIRM OF JULIO J. RAMOS
 8 35 Grove Street, Suite 107
 San Francisco, CA 94102
 Telephone: (415) 948-3015

9 *Attorneys for Plaintiff*

10

UNITED STATES DISTRICT COURT

11

CENTRAL DISTRICT OF CALIFORNIA

12

Emilse Magana, on behalf of herself and all others)
 similarly situated,) Case No. **SACV08-0591 CJC**
 Plaintiff,) CLASS ACTION COMPLAINT **(PPW)**
 v.) JURY TRIAL DEMANDED
 FIDELITY NATIONAL FINANCIAL, INC.,)
 FIDELITY NATIONAL TITLE INSURANCE)
 COMPANY, TICOR TITLE INSURANCE)
 COMPANY, TICOR TITLE INSURANCE)
 COMPANY OF FLORIDA, CHICAGO TITLE)
 INSURANCE COMPANY, NATIONAL TITLE)
 INSURANCE OF NEW YORK, INC., SECURITY)
 UNION TITLE INSURANCE COMPANY, THE)
 FIRST AMERICAN CORPORATION, FIRST)
 AMERICAN TITLE INSURANCE COMPANY,)
 UNITED GENERAL TITLE INSURANCE)
 COMPANY, LANDAMERICA FINANCIAL)
 GROUP, INC., COMMONWEALTH LAND TITLE)
 INSURANCE COMPANY, LAWYERS TITLE)
 INSURANCE CORPORATION, TRANSNATION)
 TITLE INSURANCE COMPANY, STEWART)
 TITLE GUARANTY COMPANY and STEWART)
 TITLE INSURANCE COMPANY)
 Defendants.)

27

28

CLASS ACTION COMPLAINT

1 GUIDO SAVERI (22349) *guido@saveri.com*
 2 R. ALEXANDER SAVERI (173102) *rick@saveri.com*
 3 CADIO ZIRPOLI (179108) *cadio@saveri.com*
 4 SAVERI & SAVERI, INC.
 5 111 Pine Street, Suite 1700
 San Francisco, CA 94111-5619
 6 Telephone: (415) 217-6810
 7 Facsimile: (415) 217-6813

8
 9 JULIO J. RAMOS (189944) *ramosfortrustee@yahoo.com*
 10 LAW FIRM OF JULIO J. RAMOS
 11 35 Grove Street, Suite 107
 12 San Francisco, CA 94102
 13 Telephone: (415) 948-3015

14 *Attorneys for Plaintiff*

15
 16 Emilse Magana, on behalf of herself and all others)
 17 similarly situated,) Case No.
 18 Plaintiff,)
 19 v.) CLASS ACTION COMPLAINT
 20 FIDELITY NATIONAL FINANCIAL, INC.,)
 21 FIDELITY NATIONAL TITLE INSURANCE) JURY TRIAL DEMANDED
 22 COMPANY, TICOR TITLE INSURANCE)
 23 COMPANY, TICOR TITLE INSURANCE)
 24 COMPANY OF FLORIDA, CHICAGO TITLE)
 25 INSURANCE COMPANY, NATIONAL TITLE)
 26 INSURANCE OF NEW YORK, INC., SECURITY)
 27 UNION TITLE INSURANCE COMPANY, THE)
 28 FIRST AMERICAN CORPORATION, FIRST)
 AMERICAN TITLE INSURANCE COMPANY,)
 UNITED GENERAL TITLE INSURANCE)
 COMPANY, LANDAMERICA FINANCIAL)
 GROUP, INC., COMMONWEALTH LAND TITLE)
 INSURANCE COMPANY, LAWYERS TITLE)
 INSURANCE CORPORATION, TRANSNATION)
 TITLE INSURANCE COMPANY, STEWART)
 TITLE GUARANTY COMPANY and STEWART)
 TITLE INSURANCE COMPANY)
 Defendants.)

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1 Plaintiff, Emilse Magana, by her attorneys, on behalf of herself and all others similarly
 2 situated, brings this action for treble damages and injunctive relief under the antitrust laws of the
 3 United States and based on statutes of the State of California against the above named defendants,
 4 demand a trial by jury, and complaining and alleging as follows:

5 **I. INTRODUCTION**

6 1. From the consumer's point of view, title insurance differs greatly from other, more
 7 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies
 8 protect consumers from an event that may occur in the future, title insurance offers protection from
 9 events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from
 11 problems that occurred in the past and may affect the title to the real estate that a consumer is
 12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide. In
 13 fact, almost all title policies are based on a single set of form policies published and maintained by
 14 the national trade association, the American Land Title Association. Furthermore, the end goal of
 15 an exhaustive title search by a title insurer is not to provide coverage for title defects that the search
 16 uncovers, but rather to exclude coverage for any such defects and therefore, further reduce the real
 17 value of the title policy which is written to cover only unknown defects in title at the time of
 18 issuance. As a result, title insurance is a commodity product.

19 3. Even for the savviest of insurance consumers, the purchase of a title insurance
 20 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of
 21 paperwork and signings that culminate in the closing of a home purchase. Consumers who
 22 normally shop around for their insurance and carefully compare prices, typically emerge from the
 23 closing on their new home holding an insurance policy that they know virtually nothing about and
 24 that in all likelihood, they will never need.

25 4. The title insurance market in California consists of a dozen carriers, ranging in size
 26 from regional companies to national affiliates. However, the market is dominated by four groups
 27 of affiliated companies which, combined, sell over 85 percent of the title insurance policies sold in

28

1 California and which own and control the title plants in many California counties that every title
 2 insurer must rely on in order issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional
 4 insurance carriers, choose not to market their products directly to the consumers who pay for them.
 5 Instead, the title insurance industry operates on what is termed a “reverse competition” model.
 6 Reverse competition means that title companies solicit business referrals from the other major
 7 players in the home purchase scenario – real estate agents and agencies, banks, lenders, builders,
 8 developers and others: middlemen or go-betweens. The title companies pay middlemen for these
 9 referrals in the form of direct payments, advertising expenses, junkets, parties and other kick-backs
 10 and inducements. In addition, middlemen such as Windermere, John L. Scott and Caldwell
 11 Banker-Bain, who themselves control a significant portion of the real estate brokerage market, take
 12 significant ownership stakes in local title agents and affiliates of the major title insurers and
 13 thereby get a direct return in profit from the referral of title business to the title agent whom they
 14 partly or wholly own.

15 6. Reverse competition, as the term suggests, isn’t a model that benefits consumers
 16 through market-driven forces. In fact, consumers are bypassed completely as title companies
 17 spend nearly all of their marketing budgets “wining and dining” real estate agents, banks, lenders,
 18 builders, developers and others in an effort to convince these middlemen to steer their home-
 19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers
 21 collectively meet, and jointly set rates and file these rates with the applicable state insurance
 22 authority. The rates are not subject to any meaningful review or regulation. The companies agree
 23 to fix the price of title insurance far in excess of the risk and loss experience associated with such
 24 insurance. As a result of the joint agreement as to rates, competition is relegated to the middleman.
 25 As a result of their joint rate setting and agreement, no company competes on price to the
 26 consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies
 28 agreed to not compete based on price to the consumer in other states, including California, where

1 regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive
 2 prices and to compete based on offering inducements to middlemen. In California, in three
 3 successive reports, the Office of the Insurance Commissioner (“OIC”) has found an “astonishing
 4 number” of such inducements that are in violation of state law. However, the OIC does not
 5 actively oversee or regulate rates, and, in fact, does not by its own admission have the power to do
 6 so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their
 8 agents divide the market of real-estate middlemen through the use of Affiliated Business
 9 Arrangements (“ABAs”), wherein the dominant real estate brokers purchase significant ownership
 10 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for
 11 using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a Class of those purchasing title insurance in
 13 California, seek damages arising from defendants’ violations of the Sherman Act as well as
 14 California statutory law.

15 **II. JURISDICTION AND VENUE**

16 11. This Complaint is filed and these proceedings are instituted under Sections 4 and 16
 17 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain
 18 injunctive relief and to recover treble damages and the costs of suit, including a reasonable
 19 attorneys’ fee, against defendants for the injuries sustained by plaintiff and the members of the
 20 Class which she represents by reason of defendants’ and their co-conspirators’ violations, as
 21 hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1).

22 12. Defendants transact business, maintain offices or are found within the Central
 23 District of California. The interstate commerce described hereinafter is carried on, in part, within
 24 the Central District of California and the conspiratorial acts herein alleged were carried on, in part,
 25 in the Central District of California.

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1 **III. PARTIES**

2 **A. Plaintiff**

3 13. Emilse Magana is an individual residing in the State of California. During the Class
4 Period, plaintiff purchased title insurance directly from one or more of the defendants herein and
5 has been injured by reason of the antitrust violations alleged.

6 **B. Defendants**

7 14. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware
8 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National
9 does business in California through one or more of its subsidiaries, including but not limited to,
10 defendants Fidelity National Title Insurance Company, Ticor Title Insurance Company, Ticor Title
11 Insurance Company of Florida, National Title Insurance of New York, Inc., Security Union Title
12 Insurance Company, and Chicago Title Insurance Company. Fidelity National is registered to do
13 business in California.

14 15. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California
15 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
16 FNTIC does business in California, is a licensed title insurance company in California and is
17 registered to do business in California.

18 16. Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation
19 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor does
20 business in California, is a licensed title insurance company in California and is registered to do
21 business in California.

22 17. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida
23 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
24 TTICF does business in California, is a licensed title insurance company in California and is
25 registered to do business in California.

26 18. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri
27 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
28

1 Chicago Title does business in California, is a licensed title insurance company in California and is
 2 registered to do business in California.

3 19. Defendant National Title Insurance of New York, Inc. (“NTINY”) is a New York
 4 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
 5 NTINY does business in California, is a licensed title insurance company in California and is
 6 registered to do business in California.

7 20. Defendant Security Union Title Insurance Company (“SUTIC”) is a California
 8 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.
 9 SUTIC does business in California, is a licensed title insurance company in California and is
 10 registered to do business in California.

11 21. The Fidelity family of title insurance companies (collectively, “Fidelity”) – which
 12 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and SUTIC,
 13 and their affiliates – is engaged in selling title insurance to purchasers of commercial and
 14 residential real estate throughout the United States, including California. Nationally, Fidelity
 15 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly
 16 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)
 17 and since TIRSA’s inception have charged title insurance rates in New York that TIRSA
 18 collectively sets.

19 22. The Fidelity family of title insurance companies and their affiliates are wholly-
 20 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,
 21 Fidelity National is a provider of title insurance, specialty insurance, and claims management
 22 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of title
 23 insurance companies engaged in the conduct challenged herein with the approval and assent of
 24 defendant Fidelity National.

25 23. Defendant The First American Corporation (“First American”) is a California
 26 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. First
 27 American does business in California through one or more of its subsidiaries, including but not
 28

1 limited to, defendants First American Title Insurance Company and United General Title Insurance
2 Company.

3 24. Defendant First American Title Insurance Company (“FATIC”) is a California
4 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC does
5 business in California, is a licensed title insurance company in California and is registered to do
6 business in California.
7

8 25. Defendant United General Title Insurance Company (“UGTIC”) is a Colorado
9 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does
10 business in California, is a licensed title insurance company in California and is registered to do
11 business in California.

12 26. The First American family of title insurance companies (collectively, “First
13 American”) – which includes defendants First American, FATIC and UGTIC, and their affiliates –
14 is engaged in selling title insurance to purchasers of commercial and residential real estate
15 throughout the United States, including California. Nationally, First American accounts for
16 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion. First
17 American Title was a founding member of TIRSA and since TIRSA’s inception has charged title
18 insurance rates in New York that TIRSA collectively sets.
19

20 27. The First American family of title insurance companies and their affiliates are
21 wholly-owned and controlled by defendant The First American Corporation. Through its
22 subsidiaries, First American is a provider of title insurance, business information, and related
23 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First
24 American family of title insurance companies and their affiliates engaged in the conduct
25 challenged herein with the approval and assent of defendant First American.

26 28. Defendant LandAmerica Financial Group, Inc. (“LandAmerica”) is a Virginia
27 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does
28 business in California through one or more of its subsidiaries, including but not limited to,

1 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation
 2 and Transnation Title Insurance Company.

3 29. Defendant Commonwealth Land Title Insurance Company (“CLTIC”) is a
 4 Pennsylvania corporation with is principle place of business at 5600 Cox Road, Glen Allen,
 5 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in
 6 California and is registered to do business in California.

7 30. Defendant Lawyers Title Insurance Corporation (“LTIC”) is a Nebraska corporation
 8 with is principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060. LTIC does
 9 business in California, is a licensed title insurance company in California and is registered to do
 10 business in California.

11 31. Defendant Transnation Title Insurance Company (“TNTIC”) is a Nebraska
 12 corporation with is principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.
 13 TNTIC does business in California, is a licensed title insurance company in California and is
 14 registered to do business in California.

15 32. The LandAmerica family of title insurance companies (collectively,
 16 “LandAmerica”) – which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their
 17 affiliates – is engaged in selling title insurance to purchasers of commercial and residential real
 18 estate throughout the United States, including California. Nationally, LandAmerica accounts for
 19 approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion.
 20 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA’s
 21 inception have charged title insurance rates in New York that TIRSA collectively sets.

22 33. The LandAmerica family of title insurance companies and their affiliates are
 23 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its
 24 subsidiaries, LandAmerica is a provider of title insurance and other products and services that
 25 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.
 26 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title insurance
 27 companies and their affiliates engaged in the conduct challenged herein with the approval of
 28 defendant LandAmerica.

1 34. Defendant Stewart Title Guaranty Company (“STGC”) is a Texas corporation
 2 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in
 3 California, is a licensed title insurance company in California and is registered to do business in
 4 California.

5 35. Defendant Stewart Title Insurance Company (“STIC”) is a New York corporation
 6 with its principle place of business at 300 E. 42nd St., Floor 10, New York, NY 10017. STIC does
 7 business in California, is a licensed title insurance company in California and is registered to do
 8 business in California.

9 36. The Stewart family of title insurance companies (collectively, “Stewart”) – which
 10 includes defendants STGC and STIC, and its affiliates – is engaged in selling title insurance to
 11 purchasers of commercial and residential real estate throughout the United States and California.
 12 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006
 13 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA’s
 14 inception has charged title insurance rates in New York that TIRSA collectively sets.

15 37. Together, defendants account for more than 85 percent of the title premiums
 16 consumers pay in California. Nationally, they account for more than 85 percent of title premiums,
 17 which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages period,
 18 defendants charged California consumers in California virtually identical title insurance rates.

19 **IV. OTHER ENTITIES**

20 38. TIRSA is a voluntary association of title insurers licensed as a rate service
 21 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains its
 22 offices in New York City, which until recently were located at the same New York address of
 23 Fidelity Title.

24 39. TIRSA annually compiles from its members statistical data relating to their title
 25 insurance premiums, losses and expenses and submits this information in aggregate form to the
 26 New York Insurance Department. TIRSA also prepares and submits the New York Title Insurance
 27 Rate Manual which sets forth title rates to be charged and rules to be followed by TIRSA’s
 28 members. The Insurance Department has never objected to any of the rates TIRSA has collectively

1 set. Similarly, the California OIC has not actually held a public hearing or conducted any other
 2 review or regulation of the title insurance rates in California for thirty years.

3 40. TIRSA's membership is comprised of defendant insurers and all other title insurers
 4 that are licensed to issue policies in New York. Currently, Fidelity, First American, LandAmerica,
 5 and Stewart collectively represent 14 of TIRSA's 22 members. As such, they comprise a majority
 6 voting block which, according to TIRSA's by-laws, allows them to control the operations of
 7 TIRSA and, in particular, TIRSA's collective rate setting activity.

8 41. Various other persons, firms and corporations not made defendants herein have
 9 participated as co-conspirators with the defendants in the violations alleged herein and have
 10 performed acts and made statements in furtherance thereof.

11 **V. CLASS ACTION ALLEGATIONS**

12 42. Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the
 13 Federal Rules of Civil Procedure, on behalf of herself and a Class consisting of all persons
 14 excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who
 15 purchased directly, from one or more of the defendants and/or their co-conspirators title insurance
 16 for residential and commercial property in California during the four year period preceding this
 17 lawsuit and who have sustained damages as a result of the conspiracy herein alleged. The number
 18 of potential Class members is so numerous that joinder is impracticable.

19 43. Plaintiff, as representative of the Class, will fairly and adequately protect the interest
 20 of the Class members. The interests of plaintiff are coincident with, and not antagonistic to, those
 21 of the Class members.

22 44. Except as to the amount of damages each member of the Class has by itself
 23 sustained, all other questions of fact and law are common to the Class, including but not limited to,
 24 the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act
 25 (15 U.S.C. § 1) and the effects of such violation.

26 45. Plaintiff, along with all other members of the Rule (b)(3) Class, were injured as a
 27 result of paying supracompetitive prices for title insurance in California. These supracompetitive
 28

1 prices were achieved as a result of defendants' illegal price-fixing activities and market allocation
 2 and division.

3 46. Members of the Class include hundreds of thousands, if not millions, of consumers.
 4 They are so numerous that their joinder would be impracticable.

5 47. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal
 6 Rules of Civil Procedure, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule
 7 (b)(2) Class includes all members of the (b)(3) Class, and all consumers who are threatened with
 8 injury by the anticompetitive conduct detailed herein.

9 48. Defendants have acted, continued to act, refused to act and continued to refuse to act
 10 on grounds generally applicable to the Rule (b)(2) Class, thereby making appropriate final
 11 injunctive relief with respect to the Rule (b)(2) Class as a whole.

12 49. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions, of
 13 consumers. They are so numerous that their joinder would be impracticable.

14 50. Common questions of law and fact exist with respect to all Class members and
 15 predominate over any questions solely affecting individual Class members. Among the questions
 16 of law or fact common to the class are the following:

- 17 • Whether defendants have engaged in the alleged illegal price-fixing activity
 and market allocation and division.
- 18 • The duration and scope of defendants' alleged illegal price-fixing and market
 allocation and division activity.
- 19 • Whether defendants' alleged illegal price-fixing and market allocation and
 division has caused higher prices to plaintiffs and other purchasers of title
 insurance in California.
- 20 • Whether the Insurance Commissioner has actively supervised defendants'
 price fixing and market allocation and division.

21 51. Plaintiff does not have any conflict of interest with other Class members. Plaintiff's
 22 claims are typical of the claims of the Class and they will fairly and adequately reflect the interests
 23 of the Class. Counsel is competent and experienced in federal class action and federal antitrust
 24 litigation and has been retained to represent the Class.

1 52. This action is superior to any other method for the fair and efficient adjudication of
 2 this legal dispute since joinder of all members is not only impracticable, but impossible. The
 3 damages suffered by certain members of the Class are small in relation to the expense and burden
 4 of individual litigation and therefore it is highly impractical for such Class members to seek redress
 5 for damages resulting from defendants' anticompetitive conduct.

6 53. There will be no extraordinary difficulty in the management of the Class action.

7 **VI. TRADE AND COMMERCE**

8 54. During all or part of the period in suit, defendants and their co-conspirators were
 9 sellers of title insurance in California.

10 55. During the period in suit, the defendants sold substantial quantities of title insurance
 11 in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in the United
 12 States paid \$17 billion for residential title insurance policies.

13 56. During the period in suit, Class members from locations outside California
 14 purchased commercial or residential property and title insurance within California.

15 57. During the period in suit, the defendants were the major sellers of title insurance in
 16 the United States and California. Defendants controlled in excess of 85 percent of the market for
 17 title insurance in the United States and California.

18 58. The activities of the defendants and their co-conspirators, as described herein, were
 19 within the flow of interstate commerce and substantially affected interstate commerce.

20 **VII. FACTUAL ALLEGATIONS**

21 **A. The Nature of Title Insurance**

22 59. Title insurance is one of most costly items associated with the closing of a real
 23 estate transaction. In California, rates for title insurance are based on a percentage of the total
 24 value of the property being insured. For residential properties, this price ranged in 2005 from
 25 about \$1,010 (for a \$250,000.00) property to \$1,490 (for a \$500,000 property). For more
 26 expensive homes and commercial properties, these prices are significantly higher. This amount
 27 spent on title insurance has risen dramatically over the past decade.

28

1 60. Title insurance serves an important purpose. It protects the purchaser of a property
 2 from any unidentified defects in the title that would in any way interfere with the full and complete
 3 ownership and use of the property with the ultimate right to resell the property. Title insurance is
 4 required by lenders in most residential and commercial real estate transactions.

5 61. Title insurance companies operate their business on the premise that consumers are
 6 generally uninformed or unaware of all matters concerning title insurance. Consumers are
 7 generally not presented, at any time, with an opportunity to make an independent decision
 8 regarding any aspect of their property title. That decision is typically made for them by their
 9 lawyer, mortgage broker, lender, or realtor. Consequently, for most purchasers, the cost of title
 10 insurance is not challenged. Most consumers do not even become aware of the price they will pay
 11 and to which insurer they will pay it until the actual closing of the real estate transaction. By then
 12 it's too late, consumers can't attempt to negotiate a better title insurance price or alternate provider
 13 for fear of delaying or derailing the entire transaction. There is no shopping around. There is no
 14 negotiation of price.

15 62. This dynamic basically removes the sale of title insurance from the normal
 16 competitive process. Unlike the regular forces of supply and demand that keep most industries and
 17 their pricing in check, the title insurance industry is not subject to any real competitive constraints.
 18 The purchasers of the insurance, in most instances, are not the ones making the purchasing
 19 decisions. And, they are certainly in no position to question the price.

20 63. The most effective, but illegal, way for a particular title insurer to get business is to
 21 encourage those making the purchasing decisions – the real-estate middlemen – to steer business to
 22 that insurer. The best way to so motivate the middlemen is not through lower prices (that they are
 23 not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals, business
 24 services and other financial enticements. Therefore, it is through higher pricing (which allows for
 25 generous inducements and kick-backs), not lower pricing, that provides the best way for title
 26 insurers to compete and increase their business.

27

28

1 **B. Price-Fixing in the Large Markets**

2 64. New York is one of several states in which the leading title insurers collectively fix
 3 their prices through a rate-setting organization like TIRSA. There are two principal cost
 4 components that go into TIRSA's calculation. One comprises the risk associated with issuing the
 5 title policy. The other comprises the "agency commissions" paid to title agents.

6 65. The risk component covers the risk the title insurer bears for any undiscovered
 7 defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of
 8 loss to the insurer. That is because title insurance protects against unknown *prior* events that cause
 9 defects in title. With a proper search and examination of prior ownership records, any such defects
 10 can and almost always are readily identified and excluded from the policy's coverage.
 11 Consequently, the average claim payout on a title insurance policy in the United States amounts to
 12 only about 5 percent of the total premium collected. This is very different from property coverage
 13 (such as auto and home insurance) – which protects against *future* occurrences over which the
 14 insurer has little to no control – where the average claim payout amounts to about 80 percent of the
 15 total premium.

16 66. The "agency commissions" component of the title insurance rate covers payments
 17 made to title agents. Defendants have an ownership or management stake in many of the title
 18 agencies to which these payments are made. A small portion of these payments is for the search
 19 and exam of prior ownership records of the property being purchased to identify any liens,
 20 encumbrances, burdens, exclusions, or other defects in the title. The search and exam function
 21 does not involve the spreading or underwriting of risk, and title insurers typically outsource this
 22 task to title agents.

23 67. The remainder, and by far the bulk, of the agency commissions are comprised of
 24 costs unrelated to the issuance of title insurance. These costs include kickbacks and other financial
 25 inducements title insurers provide to title agents and indirectly (through title agents) to the lawyers,
 26 brokers, and lenders who, in reality, are the ones deciding which title insurer to use. These
 27 payments have nothing to do with the issuance of title insurance and are made by title insurers
 28 merely to inflate their revenues and steer business their way.

1 68. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title
 2 insurance premium is based on the so-called "costs" associated with the payment of agency
 3 commissions. Only 15 percent is based on costs associated with the risk of loss.

4 69. TIRSA publishes its final calculated title rates in the New York Title Insurance Rate
 5 Manual. These rates are tied to the value of the property being insured. This is so despite the fact
 6 that the costs associated with agency commissions are entirely unrelated to the value of the
 7 property. Indeed, agency kickbacks and enticements have little to do with producing a particular
 8 title policy and provide no value – proportional to property value or otherwise – to the consumer.
 9 Even search and exam costs are unrelated to property value. They instead depend on the age of the
 10 property, the complexity of the ownership history, and the accessibility of prior ownership records.

11 70. There are other states in which the defendants overtly meet and agree to fix the rates
 12 for title insurance as part of a formal collective rate setting process.

13 C. TIRSA's Formation

14 71. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served as
 15 the title insurance rate-setting body in New York. NYBTU, along with the title insurance rate
 16 setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal
 17 Trade Commission ("FTC") challenge to the collective rate setting activity of many of these
 18 associations. The FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992),
 19 where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate setting
 20 activity of these rating bureaus must be actively supervised by the state.

21 72. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC
 22 contended that the respective state insurance departments merely rubber-stamped this portion of the
 23 collectively fixed rates without any independent review or analysis of their reasonableness or cost
 24 justification. The Supreme Court agreed with the FTC that this kind of limited state oversight was
 25 not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance department has to
 26 "exercise[] sufficient independent judgment and control so that the details of the rates or prices have
 27 been established as a product of deliberate state intervention, not simply by agreement among
 28 private parties." *Ticor*, 504 U.S. at 634-35.

1 73. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand in
 2 *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the
 3 collective rate-setting of certain state rating bureaus was improper because it was not actively
 4 supervised by the state. According to the circuit court, “[t]he Supreme Court plainly instructed us
 5 that a state's rubber stamp is not enough. Active supervision requires the state regulatory
 6 authorities' independent review and approval.” *Id.* at 1139.

7 74. Defendants formulated TIRSA's first rate manual and procedure soon after the
 8 Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme to
 9 get around the rigors of state oversight required by *Ticor*. They have done so by calculating a
 10 single rate that comprises both risk and agency commission costs and by outsourcing to title agents
 11 the agency commission costs. In this way, defendants avoid providing the Insurance Department
 12 with any detailed breakout or backup for the bulk of the costs that make up their collectively fixed
 13 rates.

14 75. TIRSA merely submits an aggregated figure that is supposed to represent the total
 15 agency commission costs. Embedded within this figure is the vast quantity of dollars that are
 16 funneled to and through the title agencies as kickbacks, financial inducements and other costs
 17 unrelated to the issuance of title insurance. Defendants' design in all of this has been to effective
 18 “hide” the cost basis for their artificially high and collectively fixed title insurance premiums from
 19 the regulatory scrutiny that *Ticor* demands.

20 **D. Lack of Regulatory Supervision and Authority in New York and Other States
 21 Including California**

22 76. There is no provision under the New York Insurance Law for TIRSA to include in
 23 its collectively fixed rates kickbacks and other agency commission payments unrelated to the
 24 issuance of title insurance. Indeed, the New York Insurance Department has openly acknowledged
 25 that it lacks the authority to review any agency commission payments. It has likewise recognized
 26 that defendants' outsourcing of agency commission costs has prevented it from performing a
 27 meaningful review of TIRSA's calculated rates. This was made clear at a November 2006 public
 28 hearing the New York Insurance Department held – the first in 15 years – where it questioned

1 TIRSA and its members on TIRSA's failure to provide the Insurance Department with any backup
 2 or detail for agency commissions.

3 77. At the hearing, the Insurance Department conceded that it could not properly
 4 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost
 5 information on agency commissions that TIRSA does not provide.

6 78. The Insurance Department's recognition that it is not properly supervising TIRSA's
 7 rate-setting activity is consistent with the April 2007 findings of the U.S. Government
 8 Accountability Office ("GAO") that the title insurance industry is in need of greater state
 9 regulation. The GAO studied the industry conditions of several states, including New York, and
 10 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs*
 11 *and operations*, needed to analyze premium prices and underlying costs." (Emphasis added.)

12 79. Unchecked by regulatory review and insulated from competition, defendants have
 13 thus been able to collectively fix title insurance rates at supra competitive levels and earn profits
 14 that vastly exceed those contemplated by the Insurance Department or that would have resulted in a
 15 free and open competitive market.

16 80. At the time of TIRSA's formation, the Insurance Department established 5 percent
 17 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance
 18 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its
 19 revenue and cost information, to ensure that this 5 percent profit level is maintained and based on a
 20 reasonable premium. However, without the authority or ability to scrutinize agency commission
 21 costs, the Insurance Department has been unable to perform this function. As a result, defendants
 22 (through TIRSA) have been able to set artificially high title premiums and secure title profits far in
 23 excess of the 5 percent threshold.

24 81. Through an independent investigation conducted over the past several years, the
 25 New York State Attorney General found that for every dollar of insurance premium defendants
 26 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is paid
 27 out in claims. And, of the roughly 85 cents that supposedly covers agency commissions, only
 28 between 8 and 11 cents goes to costs actually incurred by title agents in producing the title policy.

1 These numbers show that title insurers' collectively fixed rates have resulted in profits that
 2 untethered to and vastly exceed the costs of producing such policies.

3 82. The New York Attorney General's investigation further revealed that what was
 4 largely driving these numbers were the kickbacks and other financial inducements defendants were
 5 funneling to and through title agents to secure more business. As reported at the New York
 6 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it spent
 7 more than \$1 million of these so-called "agency commissions" on items identified as "Christmas",
 8 "automobile expenses", "political contributions", "promotional expenses", and "travel and
 9 entertainment". These expenses are not even remotely related to the issuance of title insurance.

10 83. A report to the California Insurance Comissioner prepared by Barry Birnbaum,
 11 Consulting Economist, in December 2005, found strikingly similar abuses, "We found numerous
 12 examples in California of illegal rebates and kickbacks where the title insurer or the underwritten
 13 title company provides money, free services or other things of value to a real estate agent, a lender
 14 or homebuilder in exchange for business referrals." (*An Analysis of Competition in the California*
 15 *Title Insurance and Escrow Industry*, December 2005, p. 3)

16 84. All of this "excess money" paid to title agents not only works to steer business to
 17 defendants. It also serves to boost defendants' own profits through the inflated revenues they
 18 obtain to cover these agency payments and through their ownership or management stake in many
 19 of these agencies.

20 85. Defendants are competitors in the sale of title insurance to consumers throughout
 21 the United States. These title insurers have agreed and engaged in concerted efforts to
 22 (i) collectively set and charge uniform and supracompetitive rates for title insurance, (ii) include in
 23 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,
 24 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these supposed
 25 "costs" from regulatory scrutiny by funneling them to and through title agents over which the
 26 government agencies have no ability or authority to regulate.

27

28

1 86. The GAO in its 2007 report entitled “Actions Needed to Improve Oversight of the
 2 Title Insurance Industry and Better Protect Consumers” found several indicia of a lack of
 3 competition and questions about the reasonableness of prices including:

- 4 • Consumers find it difficult to shop for title insurance,
 therefore, they put little pressure on insurers and agents to
 compete based on price;
- 5 • Title agents do not market to consumers, who pay for title
 insurance, but to those in the position to refer consumers to
 particular title agents, thus creating potential conflicts of
 interest;
- 6 • A number of recent investigations by HUD and state
 regulatory officials have identified instances of alleged illegal
 activities with the title industry that appear to reduce price
 competition and could indicate excessive prices;
- 7 • As property values or loan amounts increase, prices paid for
 title insurance by consumers appear to increase faster than
 insurers’ and agents’ costs; and
- 8 • In states where agents’ search and examination services are
 not included in the premium paid by consumers, it is not clear
 that additional amounts paid to title agents are fully supported
 by underlying costs.

17 87. The GAO visited several states, including California, and found a lack of regulatory
 18 oversight:

19 In the states we visited, we found that regulators did not assess title
 20 agents’ costs to determine whether they were in line with premium
 21 rates; had made only limited efforts to oversee title agents (including
 22 ABAs involving insurers and agents); and, until recently, had taken
 23 few actions against alleged violations of antikickback laws. In part,
 24 this situation has resulted from a lack of resources and limited
 25 coordination among different regulators within states. On the federal
 26 level, authority for alleged violations of section 8 of RESPA,
 27 including those involving increasingly complex ABAs, is limited to
 seeking injunctive relief. Some state regulators expressed frustration
 with HUD’s level of responsiveness to their requests for help with
 enforcement, and some industry officials said that RESPA rules
 regarding ABAs and referral fees need to be clarified. Industry and
 government stakeholders have proposed several regulatory changes,
 including RESPA reform, strengthened regulation of agents, a

1 competitor right of action with no monetary penalty, and alternative
 2 title insurance models. [*Id.* at 41, footnotes omitted.]

3 **E. Competition Based on Kickbacks and Inducements But Not Rates**

4 88. Having agreed to fix or stabilize prices in New York and other states where they
 overtly meet to promulgate rates, these same defendants then set out to do the same in other states.
 5

6 89. In other words, as a direct result of these meetings where rates were agreed to, these
 same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well.
 To compete on rates in other states could and would imperil their ability to maintain the agreed rate
 7 in states like New York.
 8

9 90. As is the case in New York, a lack of regulatory authority over rates created an
 environment in which a conspiracy can and did succeed. No agency was examining why all the
 10 rates were virtually identical, and no agency was examining whether the costs associated with these
 11 premiums were reasonable. This is an environment which is conducive to price fixing.
 12

13 91. In California, there is a lack of regulatory authority and oversight over title
 insurance companies. The rates in California are not set as part of a deliberate state intervention
 14 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue in
 15 this case went into effect without review.
 16

17 92. In fact, in February of 2007, the Insurance Comissioner of California, Steve Poizner
 issued a statement concluding "that reasonable price competition does not exist for title and escrow
 18 services." (*Insurance Comissioner Steve Poizner Issues Statement Following Decision by OAL on*
New Regulations, California Department of Insurance, February 22, 2007)
 19

20 **F. Other Indicators of a Lack of Competition and Conditions Conducive to Collusive
 21 Rate Setting**

22 93. In addition to the uniformity of rates, other facts suggest that it is more plausible
 than not that rates have been set based on an agreement to fix prices.
 23

24 94. In theory, the chain of title should be documented back to its historic grant of
 ownership centuries in the past. Fear about a possible title defect in the distant past is widely used
 25 as a justification by title agencies when convincing property buyers to purchase an owner policy in
 26

1 addition to the lender policy, which is mandatory to secure a mortgage. The title agency, however,
 2 saves much time and money when the search is limited to one or two transactions. They rely on
 3 the insurance policy to cover the remote chance of missing an earlier but still-valid claim. If such a
 4 claim is asserted and survives the scrutiny of the title insurance company's legal department, the
 5 expected cost of compensation is likely to be less than the sum of added overhead costs of
 6 routinely tracing back every chain of title to the earliest registered owner in the distant past.

7 95. Title insurance industry officials tend to justify the large proportion of the premium
 8 retained by the title abstract and settlement agency (from 60 to more than 90 percent) by the
 9 alleged high cost of title searching back into the distant past. In fact, a high proportion of
 10 noncommercial properties are searched only through the most recent transaction. No information
 11 is available as to what proportion of claims originate in the distant past. The industry has never
 12 published pertinent statistics. It would have a marketing incentive to publish these statistics if the
 13 risk were significant; that it has not published these statistics indicates that the risk probably is only
 14 slightly greater than zero.

15 96. Many U.S. homes are being resold three or four times in twenty-five years. At each
 16 of these occasions, an abstract of title will be prepared on the basis of a more or less thorough
 17 review of the available title records, inheritance records, family records and records of past or
 18 current liens against a property. It is reasonable, therefore, to suspect that the risk of a title defect
 19 will decrease every time a property is sold.

20 97. Title searches have become less labor intensive, especially in large urban counties
 21 and cities. More and more of the information is available online. The statistical likelihood that a
 22 title default would be overlooked is a closely held industry secret, but it appears to be so small that
 23 many transactions are now insured on the basis of a search of the last owner's title history or a
 24 search into transactions that occurred during the last twenty-five to thirty-five years. The evidence
 25 is strong that the title insurance industry has achieved a remarkably high level of loss minimization.
 26 Indeed, the national average recovery for a claim on a title insurance policy is approximately 5% of
 27 the total premium. On the other hand, the national average for property insurance is approximately
 28 80% of the total premium collected.

1 98. Thus the costs of production have decreased as has the risk of loss yet none of these
 2 factors has resulted in price competition at the consumer level.

3 99. There is a remarkable absence of rate changes by title insurers over the past five
 4 years, despite declining costs of production, increased number of transactions and increased
 5 revenue per transaction. During a period when costs per unit of production declined significantly,
 6 underwritten title companies and title insurers maintained excessive rates. The prices charged by
 7 title insurers and underwritten title companies were not and are not responsive to the changing
 8 costs of production or increasing revenue per transaction at a given set of rates. Again, this is
 9 indicia of an agreement not to compete based on price.

10 100. As noted, the title companies engage in illegal rebates and kickbacks where the title
 11 insurer or the underwritten title company provides money, free services or other things of value to
 12 a real estate agent, a lender or homebuilder in exchange for business referrals. These illegal rebates
 13 and kickbacks – a consequence of reverse competition – show that title insurance rates are supra
 14 competitive and that some portion of the overcharge is passed from the underwritten title company
 15 or title insurer to the referrer of business.

16 101. A lack of competition and the ability to control prices is enhanced by the fact that
 17 there were few title insurer entrants over the period from 1995 through 2005 and the number of
 18 title insurer groups declined as title insurers acquired other title insurers. There were few
 19 underwritten title company entrants over the 2000 to 2005 period and new entrants were controlled
 20 business arrangements whose addition to the market did not result in greater price competition.

21 102. Access to title plants can be a barrier to entry, but a large barrier to entry exists due
 22 to the established relationships between the entities that can steer the consumer's title and escrow
 23 business and the entities who sell title insurance and escrow services.

24 103. The title insurance market is highly concentrated – a few title insurers account for
 25 the vast majority of title insurance sales – at both the statewide level and at the county level in
 26 California. For example, three title insurer groups account for 77.4% of the market at a statewide
 27 level. At the county level, each individual market was highly concentrated. The GAO found that
 28

1 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the
2 ability of companies to fix prices

3 104. The agreement not to compete based on price is also evidenced by the fact that no
4 company has marketed its services to consumers, the ultimate purchasers of the product. This is in
5 marked contrast to real insurance, for example, car insurance, where the companies compete
6 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor," or
7 Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

8 105. As a result of this lack of competition, California title insurance and escrow services
9 markets have enjoyed excessive profits, “In a competitive market, sellers earn a reasonable profit.
10 In the California title insurance and escrown services markets, bot the title insurers and the
11 underwritten title companies realized excessive profits over an extended period of time. In 2003
12 and 2004, underwritten title companies in California earned after-tax profits of 49.0% and 32.3%
13 respectively – excessive by any reasonable measure.” (*An Analysis of Competition in the California*
14 *Title Insurance and Escrow Industry*, December 2005, p. 2)

15 || VIII. CLAIMS FOR RELIEF

COUNT I

Violation of the Sherman Act

18 || 106. Plaintiff incorporates by reference the preceding allegations.

19 107. Beginning at least as early as May 2004, and continuing thereafter to the present, the
20 exact dates being unknown to plaintiff, defendants and their co-conspirators engaged in a
21 combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and
22 commerce in violation of Section 1 of the Sherman Act.

23 108. The aforesaid combination and conspiracy has consisted of a continuing agreement,
24 understanding and concert of action among the defendants and their co-conspirators, the substantial
25 terms of which have been:

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and

(c) to allocate and divide the market for title insurance in California.

109. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California and is a *per se* violation of Section I of the Sherman Act.

110. Defendants' price-fixing, market allocation and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

111. Through their collective price-fixing, market allocation and division and manipulation of the regulatory process, defendants have harmed competition by charging consumers supra competitive prices for title insurance in California, evidenced in part by the fact that the prices are uniformly higher than compared with the cost of providing the insurance.

112. The aforesaid combination and conspiracy has had the following effects among others:

(a) price competition in the sale of title insurance has been suppressed, restrained and eliminated;

(b) prices for title insurance have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and

- (c) purchasers of title insurance have been deprived of the benefit of free and open competition.

113. During the period of the antitrust violations by defendants and their co-conspirators, plaintiff and each member of the Class she represents, has purchased title insurance and, by reason of the antitrust violations herein alleged, paid more for such that it would have paid in the absence of said antitrust violations. As a result, plaintiff and each member of the Class she represents, has been injured and damaged in an amount presently undetermined.

COUNT II

Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.*

114. Plaintiff incorporates by reference the preceding allegations.

115. Defendants conduct as set forth above is in violation of the Cartwright Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

116. As a direct result of defendants' unlawful acts plaintiffs have paid artificially inflated prices for title insurance and have suffered injury to their business and property.

COUNT III

(California's Business & Professions Code §§ 17200, et seq.)

117. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of herself and the members of the Class.

118. Defendants' statements and representations constitute unfair, unlawful and deceptive trade practices in violation of the UCL.

119. All of the wrongful conduct alleged herein occurs and continues to occur in the conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is repeated in the State of California on hundreds, if not thousands, of occasions daily.

120. Plaintiff has suffered injury in fact and has lost money or property as a result of defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance than she would or should have absent the conduct complained of.

121. Plaintiff requests that this Court enter such orders or judgment as may be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to restore to any person in interest any money which may have been acquired by means of such unfair competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

COUNT IV

UNJUST ENRICHMENT

122. Plaintiff incorporates by reference the preceding allegations.

123. This Cause of Action is pled in the alternative to all claims and/or causes of action at law.

124. Defendant has received a benefit from plaintiff and the Class members in the form of the prices plaintiff and the Class members paid for defendants' title insurance.

125. Defendants are aware of their receipt of the above-described benefit.

126. Defendants received the above-described benefit to the detriment of plaintiff and each of the other members of the Class.

127. Defendants continue to retain the above-described benefit to the detriment of plaintiff and the Class members.

128. As a result of defendants' unjust enrichment, plaintiff and the Class members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands:

A. That the alleged combination and conspiracy among the defendants and their co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act:

B. That the Court declare that the premiums charged are excessive under state law and order damages:

C. That judgment be entered against defendants, jointly and severally, and in favor of plaintiff, and each member of the Class it represents, for threefold the damages determined to have been sustained by plaintiff, and each member of the Class it represents, together with the cost of suit, including a reasonable attorneys' fee:

D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding or concert of action, adopting or following any practice, plan, program, or design having a similar purpose or effect in restraining competition; and

E. Such other and further relief as may appear necessary and appropriate.

JURY TRIAL DEMANDED

Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged herein.

DATED: May 27, 2007.

Randy Renick (179652)
Dan Stormer (101967)
HADSELL, STORMER, KEENY,
RICHARDSON & RENICK, LLP
128 N. Fair Oaks Ave.
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079

GUIDO SAVERI (22349)
R. ALEXANDER SAVERI (173102)
CADIO ZIRPOLI (179108)
SAVERI & SAVERI, INC.
111 Pine Street, Suite 1700
San Francisco, CA 94111-5619
Telephone: (415) 217-6810

JULIO J. RAMOS (189944)
LAW FIRM OF JULIO J. RAMOS
35 Grove Street, Suite 107
San Francisco, CA 94102
Telephone: (415) 948-3015

Attorneys for Plaintiff

ti.001

EXHIBIT 9

FILED

1 Brian Barry (135631: bribarry1@yahoo.com)
2 LAW OFFICES OF BRIAN BARRY
3 1801 Avenue of the Stars, Suite 307
4 Los Angeles, California 90067
Telephone: (310) 788-0831
Facsimile: (310) 788-0841

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BY _____

5 Attorneys for Plaintiff

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

8 Mark Moynahan, on behalf of himself and all
9 others similarly situated,

10 Plaintiff,

11 v.

12 FIDELITY NATIONAL FINANCIAL, INC.,
FIDELITY NATIONAL TITLE
13 INSURANCE COMPANY, TICOR TITLE
INSURANCE COMPANY, TICOR TITLE
14 INSURANCE COMPANY OF FLORIDA,
CHICAGO TITLE INSURANCE
15 COMPANY, NATIONAL TITLE
INSURANCE OF NEW YORK, INC.,
SECURITY UNION TITLE INSURANCE
COMPANY, THE FIRST AMERICAN
16 CORPORATION, FIRST AMERICAN
TITLE INSURANCE COMPANY, UNITED
GENERAL TITLE INSURANCE
17 COMPANY, LANDAMERICA FINANCIAL
GROUP, INC., COMMONWEALTH LAND
TITLE INSURANCE COMPANY,
LAWYERS TITLE INSURANCE
18 CORPORATION, TRANSNATION TITLE
INSURANCE COMPANY, STEWART
TITLE GUARANTY COMPANY and
19 STEWART TITLE INSURANCE
COMPANY

20 Defendants.

Case No.

AHS
(Anx)**SACV08-0620****CLASS ACTION
COMPLAINT****JURY TRIAL DEMANDED****COPY**

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1 Plaintiff, Mark Moynahan, by his attorneys, on behalf of himself and all others
2 similarly situated, brings this action for treble damages and injunctive relief under
3 the antitrust laws of the United States and based on statutes of the State of California
4 against the above named defendants, demand a trial by jury, and complaining and
5 alleging as follows:

6 **I. INTRODUCTION**

7 1. From the consumer's point of view, title insurance differs greatly from
8 other, more familiar kinds of insurance. For one thing, while automobile and
9 homeowner insurance policies protect consumers from an event that may occur in
10 the future, title insurance offers protection from events that might have occurred in
11 the past.

12 2. Most simply, title insurance is protection purchased against a loss
13 arising from problems that occurred in the past and may affect the title to the real
14 estate that a consumer is buying. Title insurers do not compete on the basis of the
15 policies or coverage that they provide. In fact, almost all title policies are based on a
16 single set of form policies published and maintained by the national trade
17 association, the American Land Title Association. Furthermore, the end goal of an
18 exhaustive title search by a title insurer is not to provide coverage for title defects
19 that the search uncovers, but rather to exclude coverage for any such defects and
20 therefore, further reduce the real value of the title policy which is written to cover
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1 only unknown defects in title at the time of issuance. As a result, title insurance is a
2 commodity product.

3 3. Even for the savviest of insurance consumers, the purchase of a title
4 insurance policy is just one more expensive step in the dizzying, convoluted and
5 often confusing flurry of paperwork and signings that culminate in the closing of a
6 home purchase. Consumers who normally shop around for their insurance and
7 carefully compare prices, typically emerge from the closing on their new home
8 holding an insurance policy that they know virtually nothing about and that in all
9 likelihood, they will never need.

10 4. The title insurance market in California consists of a dozen carriers,
11 ranging in size from regional companies to national affiliates. However, the market
12 is dominated by four groups of affiliated companies which, combined, sell over 85
13 percent of the title insurance policies sold in California and which own and control
14 the title plants in many California counties that every title insurer must rely on in
15 order issue title policies.

16 5. Title companies, in marked contrast to property, casualty, life and other
17 traditional insurance carriers, choose not to market their products directly to the
18 consumers who pay for them. Instead, the title insurance industry operates on what is
19 termed a “reverse competition” model. Reverse competition means that title
20 companies solicit business referrals from the other major players in the home
21 purchase scenario – real estate agents and agencies, banks, lenders, builders,

1 developers and others: middlemen or go-betweens. The title companies pay
2 middlemen for these referrals in the form of direct payments, advertising expenses,
3 junkets, parties and other kick-backs and inducements. In addition, middlemen such
4 as Windermere, John L. Scott and Caldwell Banker-Bain, who themselves control a
5 significant portion of the real estate brokerage market, take significant ownership
6 stakes in local title agents and affiliates of the major title insurers and thereby get a
7 direct return in profit from the referral of title business to the title agent whom they
8 partly or wholly own.

9
10 6. Reverse competition, as the term suggests, isn't a model that benefits
11 consumers through market-driven forces. In fact, consumers are bypassed
12 completely as title companies spend nearly all of their marketing budgets "wining
13 and dining" real estate agents, banks, lenders, builders, developers and others in an
14 effort to convince these middlemen to steer their home-buying clients to their
15 companies for their title insurance needs.

16
17 7. In some of the major markets in the United States, these same title
18 insurers collectively meet, and jointly set rates and file these rates with the applicable
19 state insurance authority. The rates are not subject to any meaningful review or
20 regulation. The companies agree to fix the price of title insurance far in excess of the
21 risk and loss experience associated with such insurance. As a result of the joint
22 agreement as to rates, competition is relegated to the middleman. As a result of their
23 joint rate setting and agreement, no company competes on price to the consumer.

1 8. Having agreed to fix prices in states where joint rate setting occurs, the
2 companies agreed to not compete based on price to the consumer in other states,
3 including California, where regulation of filed rates is lax or non-existent. Thus,
4 they agreed to set rates at supra competitive prices and to compete based on offering
5 inducements to middlemen. In California, in three successive reports, the Office of
6 the Insurance Commissioner (“OIC”) has found an “astonishing number” of such
7 inducements that are in violation of state law. However, the OIC does not actively
8 oversee or regulate rates, and, in fact, does not by its own admission have the power
9 to do so. The absence of regulation has allowed collusive behavior and excessive
10 rates.

11 9. In addition to paying inducements and kick-backs, the title companies
12 and their agents divide the market of real-estate middlemen through the use of
13 Affiliated Business Arrangements (“ABAs”), wherein the dominant real estate
14 brokers purchase significant ownership stakes in favored title insurance affiliates.
15 The real estate brokers then reward their associates for using the preferred title
16 insurance providers and lock-out independent title insurers.

17 10. In this action, plaintiff, on behalf of a Class of those purchasing title
18 insurance in California, seek damages arising from defendants’ violations of the
19 Sherman Act as well as California statutory law.

1 **II. JURISDICTION AND VENUE**

2
3 11. This Complaint is filed and these proceedings are instituted under
4 Sections 4 and 16 of the Act of Congress of October 15, 1914, C. 323, Stats. 731,
5 737 (15 U.S.C. §§ 15, 26) to obtain injunctive relief and to recover treble damages
6 and the costs of suit, including a reasonable attorneys' fee, against defendants for the
7 injuries sustained by plaintiff and the members of the Class which she represents by
8 reason of defendants' and their co-conspirators' violations, as hereinafter alleged, of
9 Section I of the Sherman Act (15 U.S.C. § 1).

10
11 12. Defendants transact business, maintain offices or are found within the
12 Central District of California. The interstate commerce described hereinafter is
13 carried on, in part, within the Central District of California and the conspiratorial acts
14 herein alleged were carried on, in part, in the Central District of California.

15 **III. PARTIES**

16
17 A. **Plaintiff**

18
19 21 13. Mark Moynahan, during the Class Period, purchased title insurance
20 directly from Chicago Title, one of the defendants herein and has been injured by
21
22 reason of the antitrust violations alleged.
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1 **B. Defendants**

2
3 14. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a
4 Delaware corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida
5 32204. Fidelity National does business in California through one or more of its
6 subsidiaries, including but not limited to, defendants Fidelity National Title
7 Insurance Company, Ticor Title Insurance Company, Ticor Title Insurance Company
8 of Florida, National Title Insurance of New York, Inc., Security Union Title
9 Insurance Company, and Chicago Title Insurance Company. Fidelity National is
10 registered to do business in California.

11
12 15. Defendant Fidelity National Title Insurance Company ("FNTIC") is a
13 California Corporation with its principle place of business at 601 Riverside Ave.,
14 Jacksonville, Florida 32204. FNTIC does business in California, is a licensed title
15 insurance company in California and is registered to do business in California.

16
17 16. Defendant Ticor Title Insurance Company ("Ticor") is a California
18 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville,
19 Florida 32204. Ticor does business in California, is a licensed title insurance
20 company in California and is registered to do business in California.

21
22 17. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a
23 Florida corporation with its principle place of business at 601 Riverside Ave.,

1 Jacksonville, Florida 32204. TTICF does business in California, is a licensed title
2 insurance company in California and is registered to do business in California.
3

4 18. Defendant Chicago Title Insurance Company (“Chicago Title”) is a
5 Missouri Corporation with its principle place of business at 601 Riverside Ave.,
6 Jacksonville, Florida 32204. Chicago Title does business in California, is a licensed
7 title insurance company in California and is registered to do business in California.
8

9 19. Defendant National Title Insurance of New York, Inc. (“NTINY”) is a
10 New York corporation with its principle place of business at 601 Riverside Ave.,
11 Jacksonville, Florida 32204. NTINY does business in California, is a licensed title
12 insurance company in California and is registered to do business in California.
13

14 20. Defendant Security Union Title Insurance Company (“SUTIC”) is a
15 California corporation with its principle place of business at 601 Riverside Ave.,
16 Jacksonville, Florida 32204. SUTIC does business in California, is a licensed title
17 insurance company in California and is registered to do business in California.
18

19 21. The Fidelity family of title insurance companies (collectively,
20 “Fidelity”) – which includes defendants Fidelity National, FNTIC, Ticor, TTICF,
21 Chicago Title, NTINY and SUTIC, and their affiliates – is engaged in selling title
22 insurance to purchasers of commercial and residential real estate throughout the
23 United States, including California. Nationally, Fidelity accounts for approximately
24 27 percent of title premiums, which in 2006 amounted to roughly \$4.6 billion.
25 Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)
26
27

1 and since TIRSA's inception have charged title insurance rates in New York that
2 TIRSA collectively sets.
3

4 22. The Fidelity family of title insurance companies and their affiliates are
5 wholly-owned and controlled by defendant Fidelity National Financial, Inc.
6 Through its subsidiaries, Fidelity National is a provider of title insurance, specialty
7 insurance, and claims management services. Fidelity National had 2006 revenues of
8 roughly \$9.4 billion. The Fidelity family of title insurance companies engaged in the
9 conduct challenged herein with the approval and assent of defendant Fidelity
10 National.
11

12 23. Defendant The First American Corporation ("First American") is a
13 California corporation with its headquarters at 1st American Way, Santa Ana,
14 California 92707. First American does business in California through one or more of
15 its subsidiaries, including but not limited to, defendants First American Title
16 Insurance Company and United General Title Insurance Company.
17

18 24. Defendant First American Title Insurance Company ("FATIC") is a
19 California corporation with its headquarters at 1st American Way, Santa Ana,
20 California 92707. FATIC does business in California, is a licensed title insurance
21 company in California and is registered to do business in California.
22

23 25. Defendant United General Title Insurance Company ("UGTIC") is a
24 Colorado corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO
25

1 80112. UGTIC does business in California, is a licensed title insurance company in
2 California and is registered to do business in California.
3

4 26. The First American family of title insurance companies (collectively,
5 "First American") – which includes defendants First American, FATIC and UGTIC,
6 and their affiliates – is engaged in selling title insurance to purchasers of commercial
7 and residential real estate throughout the United States, including California.
8 Nationally, First American accounts for approximately 29 percent of title premiums,
9 which in 2006 amounted to roughly \$4.8 billion. First American Title was a
10 founding member of TIRSA and since TIRSA's inception has charged title insurance
11 rates in New York that TIRSA collectively sets.

12 27. The First American family of title insurance companies and their
13 affiliates are wholly-owned and controlled by defendant The First American
14 Corporation. Through its subsidiaries, First American is a provider of title insurance,
15 business information, and related products and services. First American had 2006
16 revenues of roughly \$8.5 billion. The First American family of title insurance
17 companies and their affiliates engaged in the conduct challenged herein with the
18 approval and assent of defendant First American.
19

20 28. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a
21 Virginia corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060.
22 LandAmerica does business in California through one or more of its subsidiaries,
23 including but not limited to, defendants Commonwealth Land Title Insurance
24

1 Company, Lawyers Title Insurance Corporation and Transnation Title Insurance
2 Company.
3

4 29. Defendant Commonwealth Land Title Insurance Company (“CLTIC”)
5 is a Pennsylvania corporation with its principle place of business at 5600 Cox Road,
6 Glen Allen, Virginia 23060. CLTIC does business in California, is a licensed title
7 insurance company in California and is registered to do business in California.
8

9 30. Defendant Lawyers Title Insurance Corporation (“LTIC”) is a Nebraska
10 corporation with its principle place of business at 5600 Cox Road, Glen Allen,
11 Virginia 23060. LTIC does business in California, is a licensed title insurance
12 company in California and is registered to do business in California.
13

14 31. Defendant Transnation Title Insurance Company (“TNTIC”) is a
15 Nebraska corporation with its principle place of business at 5600 Cox Road, Glen
16 Allen, Virginia 23060. TNTIC does business in California, is a licensed title
17 insurance company in California and is registered to do business in California.
18

19 32. The LandAmerica family of title insurance companies (collectively,
20 “LandAmerica”) – which includes defendants LandAmerica, CLTIC, LTIC and
21 TNTIC, and their affiliates – is engaged in selling title insurance to purchasers of
22 commercial and residential real estate throughout the United States, including
23 California. Nationally, LandAmerica accounts for approximately 19 percent of title
24 premiums, which in 2006 amounted to roughly \$3.15 billion. Commonwealth and
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1 Lawyers Title were founding members of TIRSA and since TIRSA's inception have
2 charged title insurance rates in New York that TIRSA collectively sets.
3

4 33. The LandAmerica family of title insurance companies and their
5 affiliates are wholly-owned and controlled by defendant Land America Financial
6 Group, Inc. Through its subsidiaries, LandAmerica is a provider of title insurance
7 and other products and services that facilitate the purchase, sale, transfer, and
8 financing of residential and commercial real estate. LandAmerica had 2006
9 revenues of roughly \$4 billion. The LandAmerica family of title insurance
10 companies and their affiliates engaged in the conduct challenged herein with the
11 approval of defendant LandAmerica.

12 34. Defendant Stewart Title Guaranty Company ("STGC") is a Texas
13 corporation headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056.
14 STGC does business in California, is a licensed title insurance company in California
15 and is registered to do business in California.

16 35. Defendant Stewart Title Insurance Company ("STIC") is a New York
17 corporation with its principle place of business at 300 E. 42nd St., Floor 10, New
18 York, NY 10017. STIC does business in California, is a licensed title insurance
19 company in California and is registered to do business in California.

20 36. The Stewart family of title insurance companies (collectively,
21 "Stewart") – which includes defendants STGC and STIC, and its affiliates – is
22 engaged in selling title insurance to purchasers of commercial and residential real
23

1 estate throughout the United States and California. Nationally, Stewart accounts for
2 approximately 12 percent of title premiums, which in 2006 amounted to roughly \$2
3 billion. Stewart was a founding member of TIRSA and since TIRSA's inception has
4 charged title insurance rates in New York that TIRSA collectively sets.

5 37. Together, defendants account for more than 85 percent of the title
6 premiums consumers pay in California. Nationally, they account for more than 85
7 percent of title premiums, which in 2006 amounted to roughly \$14.5 billion.
8 Throughout the relevant damages period, defendants charged California consumers
9 in California virtually identical title insurance rates.

10 **IV. OTHER ENTITIES**

11 38. TIRSA is a voluntary association of title insurers licensed as a rate
12 service organization pursuant to Article 23 of the State of New York Insurance Law.
13 TIRSA maintains its offices in New York City, which until recently were located at
14 the same New York address of Fidelity Title.

15 39. TIRSA annually compiles from its members statistical data relating to
16 their title insurance premiums, losses and expenses and submits this information in
17 aggregate form to the New York Insurance Department. TIRSA also prepares and
18 submits the New York Title Insurance Rate Manual which sets forth title rates to be
19 charged and rules to be followed by TIRSA's members. The Insurance Department
20 has never objected to any of the rates TIRSA has collectively set. Similarly, the
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1 California OIC has not actually held a public hearing or conducted any other review
2 or regulation of the title insurance rates in California for thirty years.
3

4 40. TIRSA's membership is comprised of defendant insurers and all other
5 title insurers that are licensed to issue policies in New York. Currently, Fidelity,
6 First American, LandAmerica, and Stewart collectively represent 14 of TIRSA's 22
7 members. As such, they comprise a majority voting block which, according to
8 TIRSA's by-laws, allows them to control the operations of TIRSA and, in particular,
9 TIRSA's collective rate setting activity.
10

11 41. Various other persons, firms and corporations not made defendants
12 herein have participated as co-conspirators with the defendants in the violations
13 alleged herein and have performed acts and made statements in furtherance thereof.
14

15 **V. CLASS ACTION ALLEGATIONS**

16 42. Plaintiff brings this action under Rule 23, and particularly subsection
17 (b)(3), of the Federal Rules of Civil Procedure, on behalf of herself and a Class
18 consisting of all persons excluding governmental entities, defendants, subsidiaries
19 and affiliates of defendants, who purchased directly, from one or more of the
20 defendants and/or their co-conspirators title insurance for residential and commercial
21 property in California beginning in March 2004 and who have sustained damages as
22 a result of the conspiracy herein alleged. The number of potential Class members is
23 so numerous that joinder is impracticable.
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1 43. Plaintiff, as representative of the Class, will fairly and adequately
2 protect the interest of the Class members. The interests of plaintiff are coincident
3 with, and not antagonistic to, those of the Class members.
4

5 44. Except as to the amount of damages each member of the Class has by
6 itself sustained, all other questions of fact and law are common to the Class,
7 including but not limited to, the combination and conspiracy hereinafter alleged, the
8 violation of Section 1 of the Sherman Act (15 U.S.C. § 1) and the effects of such
9 violation.

10 45. Plaintiff, along with all other members of the Rule (b)(3) Class, were
11 injured as a result of paying supracompetitive prices for title insurance in California.
12 These supracompetitive prices were achieved as a result of defendants' illegal price-
13 fixing activities and market allocation and division.

14 46. Members of the Class include hundreds of thousands, if not millions, of
15 consumers. They are so numerous that their joinder would be impracticable.

16 47. Plaintiff also brings this action as a class action under Rule 23(b)(2) of
17 the Federal Rules of Civil Procedure, for violations of Section 1 of the Sherman Act,
18 15 U.S.C. § 1. The Rule (b)(2) Class includes all members of the (b)(3) Class, and
19 all consumers who are threatened with injury by the anticompetitive conduct detailed
20 herein.

21 48. Defendants have acted, continued to act, refused to act and continued to
22 refuse to act on grounds generally applicable to the Rule (b)(2) Class, thereby

1 making appropriate final injunctive relief with respect to the Rule (b)(2) Class as a
2 whole.
3

4 49. Members of the Rule (b)(2) Class include hundreds of thousands, if not
5 millions, of consumers. They are so numerous that their joinder would be
6 impracticable.
7

8 50. Common questions of law and fact exist with respect to all Class
9 members and predominate over any questions solely affecting individual Class
10 members. Among the questions of law or fact common to the class are the
11 following:
12

- 13 • Whether defendants have engaged in the alleged illegal price-fixing
14 activity and market allocation and division.
15
- 16 • The duration and scope of defendants' alleged illegal price-fixing
17 and market allocation and division activity.
18
- 19 • Whether defendants' alleged illegal price-fixing and market
20 allocation and division has caused higher prices to plaintiffs and
21 other purchasers of title insurance in California.
22
- 23 • Whether the Insurance Commissioner has actively supervised
24 defendants' price fixing and market allocation and division.
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1 51. Plaintiff does not have any conflict of interest with other Class
2 members. Plaintiff's claims are typical of the claims of the Class and they will fairly
3 and adequately reflect the interests of the Class. Counsel is competent and
4 experienced in federal class action and federal antitrust litigation and has been
5 retained to represent the Class.

6 52. This action is superior to any other method for the fair and efficient
7 adjudication of this legal dispute since joinder of all members is not only
8 impracticable, but impossible. The damages suffered by certain members of the
9 Class are small in relation to the expense and burden of individual litigation and
10 therefore it is highly impractical for such Class members to seek redress for damages
11 resulting from defendants' anticompetitive conduct.

12 53. There will be no extraordinary difficulty in the management of the Class
13 action.

14 **VI. TRADE AND COMMERCE**

15 54. During all or part of the period in suit, defendants and their co-
16 conspirators were sellers of title insurance in California.

17 55. During the period in suit, the defendants sold substantial quantities of
18 title insurance in a continuous and uninterrupted flow in interstate commerce. In
19 2005, consumers in the United States paid \$17 billion for residential title insurance
20 policies.

1 56. During the period in suit, Class members from locations outside
2 California purchased commercial or residential property and title insurance within
3 California.
4

5 57. During the period in suit, the defendants were the major sellers of title
6 insurance in the United States and California. Defendants controlled in excess of
7 85 percent of the market for title insurance in the United States and California.
8

9 58. The activities of the defendants and their co-conspirators, as described
10 herein, were within the flow of interstate commerce and substantially affected
11 interstate commerce.
12

13 **VII. FACTUAL ALLEGATIONS**

14

15 **A. The Nature of Title Insurance**

16 59. Title insurance is one of most costly items associated with the closing of
17 a real estate transaction. In California, rates for title insurance are based on a
18 percentage of the total value of the property being insured. For residential
19 properties, this price ranged in 2005 from about \$1,010 (for a \$250,000.00) property
20 to \$1,490 (for a \$500,000 property). For more expensive homes and commercial
21 properties, these prices are significantly higher. This amount spent on title insurance
22 has risen dramatically over the past decade.
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25 60. Title insurance serves an important purpose. It protects the purchaser of
26 a property from any unidentified defects in the title that would in any way interfere
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1 with the full and complete ownership and use of the property with the ultimate right
2 to resell the property. Title insurance is required by lenders in most residential and
3 commercial real estate transactions.
4

5 61. Title insurance companies operate their business on the premise that
6 consumers are generally uninformed or unaware of all matters concerning title
7 insurance. Consumers are generally not presented, at any time, with an opportunity
8 to make an independent decision regarding any aspect of their property title. That
9 decision is typically made for them by their lawyer, mortgage broker, lender, or
10 realtor. Consequently, for most purchasers, the cost of title insurance is not
11 challenged. Most consumers do not even become aware of the price they will pay
12 and to which insurer they will pay it until the actual closing of the real estate
13 transaction. By then it's too late, consumers can't attempt to negotiate a better title
14 insurance price or alternate provider for fear of delaying or derailing the entire
15 transaction. There is no shopping around. There is no negotiation of price.
16

17 62. This dynamic basically removes the sale of title insurance from the
18 normal competitive process. Unlike the regular forces of supply and demand that
19 keep most industries and their pricing in check, the title insurance industry is not
20 subject to any real competitive constraints. The purchasers of the insurance, in most
21 instances, are not the ones making the purchasing decisions. And, they are certainly
22 in no position to question the price.
23

1 63. The most effective, but illegal, way for a particular title insurer to get
2 business is to encourage those making the purchasing decisions – the real-estate
3 middlemen – to steer business to that insurer. The best way to so motivate the
4 middlemen is not through lower prices (that they are not even paying). Rather, it is
5 through kickbacks in the form of finder's fees, gifts, meals, business services and
6 other financial enticements. Therefore, it is through higher pricing (which allows for
7 generous inducements and kick-backs), not lower pricing, that provides the best way
8 for title insurers to compete and increase their business.

9

10 **B. Price-Fixing in the Large Markets**

11

12 64. New York is one of several states in which the leading title insurers
13 collectively fix their prices through a rate-setting organization like TIRSA. There
14 are two principal cost components that go into TIRSA's calculation. One comprises
15 the risk associated with issuing the title policy. The other comprises the "agency
16 commissions" paid to title agents.

17

18 65. The risk component covers the risk the title insurer bears for any
19 undiscovered defects in the title. Unlike property insurance, title insurance carries
20 with it a very limited risk of loss to the insurer. That is because title insurance
21 protects against unknown *prior* events that cause defects in title. With a proper
22 search and examination of prior ownership records, any such defects can and almost
23 always are readily identified and excluded from the policy's coverage.

1 Consequently, the average claim payout on a title insurance policy in the United
2 States amounts to only about 5 percent of the total premium collected. This is very
3 different from property coverage (such as auto and home insurance) – which protects
4 against *future* occurrences over which the insurer has little to no control – where the
5 average claim payout amounts to about 80 percent of the total premium.

6
7 66. The “agency commissions” component of the title insurance rate covers
8 payments made to title agents. Defendants have an ownership or management stake
9 in many of the title agencies to which these payments are made. A small portion of
10 these payments is for the search and exam of prior ownership records of the property
11 being purchased to identify any liens, encumbrances, burdens, exclusions, or other
12 defects in the title. The search and exam function does not involve the spreading or
13 underwriting of risk, and title insurers typically outsource this task to title agents.
14
15

16 67. The remainder, and by far the bulk, of the agency commissions are
17 comprised of costs unrelated to the issuance of title insurance. These costs include
18 kickbacks and other financial inducements title insurers provide to title agents and
19 indirectly (through title agents) to the lawyers, brokers, and lenders who, in reality,
20 are the ones deciding which title insurer to use. These payments have nothing to do
21 with the issuance of title insurance and are made by title insurers merely to inflate
22 their revenues and steer business their way.
23
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25 68. Under TIRSA’s collective rate setting regime, roughly 85 percent of the
26 total title insurance premium is based on the so-called “costs” associated with the
27
28

1 payment of agency commissions. Only 15 percent is based on costs associated with
2 the risk of loss.

3
4 69. TIRSA publishes its final calculated title rates in the New York Title
5 Insurance Rate Manual. These rates are tied to the value of the property being
6 insured. This is so despite the fact that the costs associated with agency
7 commissions are entirely unrelated to the value of the property. Indeed, agency
8 kickbacks and enticements have little to do with producing a particular title policy
9 and provide no value – proportional to property value or otherwise – to the
10 consumer. Even search and exam costs are unrelated to property value. They
11 instead depend on the age of the property, the complexity of the ownership history,
12 and the accessibility of prior ownership records.
13

14 70. There are other states in which the defendants overtly meet and agree to
15 fix the rates for title insurance as part of a formal collective rate setting process.
16

17 C. **TIRSA's Formation**
18

19 71. Prior to TIRSA, the New York Board of Title Underwriters (“NYBTU”)
20 served as the title insurance rate-setting body in New York. NYBTU, along with the
21 title insurance rate setting bureaus in many other states, was disbanded in the mid-
22 1980s in the wake of a Federal Trade Commission (“FTC”) challenge to the
23 collective rate setting activity of many of these associations. The FTC’s challenge
24 culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992), where the Supreme
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1 Court held that to avoid *per se* illegal price fixing liability, the rate setting activity of
2 these rating bureaus must be actively supervised by the state.
3

4 72. In *Ticor*, the FTC focused its challenge on agency commissions. The
5 FTC contended that the respective state insurance departments merely rubber-
6 stamped this portion of the collectively fixed rates without any independent review
7 or analysis of their reasonableness or cost justification. The Supreme Court agreed
8 with the FTC that this kind of limited state oversight was not sufficient. Rather, to
9 avoid illegal price-fixing liability, the state insurance department has to
10 “exercise[]sufficient independent judgment and control so that the details of the rates
11 or prices have been established as a product of deliberate state intervention, not
12 simply by agreement among private parties.” *Ticor*, 504 U.S. at 634-35.

13 73. Following the Supreme Court’s instruction in *Ticor*, the Third Circuit
14 on remand in *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the
15 FTC’s finding that the collective rate-setting of certain state rating bureaus was
16 improper because it was not actively supervised by the state. According to the
17 circuit court, “[t]he Supreme Court plainly instructed us that a state’s rubber stamp is
18 not enough. Active supervision requires the state regulatory authorities’ independent
19 review and approval.” *Id.* at 1139.

20 74. Defendants formulated TIRSA’s first rate manual and procedure soon
21 after the Supreme Court’s *Ticor* decision. Through TIRSA, defendants have set up a
22 rate-setting scheme to get around the rigors of state oversight required by *Ticor*.
23

1 They have done so by calculating a single rate that comprises both risk and agency
 2 commission costs and by outsourcing to title agents the agency commission costs. In
 3 this way, defendants avoid providing the Insurance Department with any detailed
 4 breakout or backup for the bulk of the costs that make up their collectively fixed
 5 rates.

7 75. TIRSA merely submits an aggregated figure that is supposed to
 8 represent the total agency commission costs. Embedded within this figure is the vast
 9 quantity of dollars that are funneled to and through the title agencies as kickbacks,
 10 financial inducements and other costs unrelated to the issuance of title insurance.
 11 Defendants' design in all of this has been to effectively "hide" the cost basis for their
 12 artificially high and collectively fixed title insurance premiums from the regulatory
 13 scrutiny that *Ticor* demands.

14 **D. Lack of Regulatory Supervision and Authority in New York and Other
 15 States Including California**

16 76. There is no provision under the New York Insurance Law for TIRSA to
 17 include in its collectively fixed rates kickbacks and other agency commission
 18 payments unrelated to the issuance of title insurance. Indeed, the New York
 19 Insurance Department has openly acknowledged that it lacks the authority to review
 20 any agency commission payments. It has likewise recognized that defendants'
 21 outsourcing of agency commission costs has prevented it from performing a
 22

1 meaningful review of TIRSA's calculated rates. This was made clear at a November
2 2006 public hearing the New York Insurance Department held – the first in 15 years
3 – where it questioned TIRSA and its members on TIRSA's failure to provide the
4 Insurance Department with any backup or detail for agency commissions.

5 77. At the hearing, the Insurance Department conceded that it could not
6 properly evaluate TIRSA's calculated rates, and that it could only do so if it obtained
7 the detailed cost information on agency commissions that TIRSA does not provide.
8

9 78. The Insurance Department's recognition that it is not properly
10 supervising TIRSA's rate-setting activity is consistent with the April 2007 findings
11 of the U.S. Government Accountability Office ("GAO") that the title insurance
12 industry is in need of greater state regulation. The GAO studied the industry
13 conditions of several states, including New York, and concluded that "state
14 regulators have not collected the type of data, *primarily on title agents' costs and*
15 *operations*, needed to analyze premium prices and underlying costs." (Emphasis
16 added.)

17 79. Unchecked by regulatory review and insulated from competition,
18 defendants have thus been able to collectively fix title insurance rates at supra
19 competitive levels and earn profits that vastly exceed those contemplated by the
20 Insurance Department or that would have resulted in a free and open competitive
21 market.
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1 80. At the time of TIRSA's formation, the Insurance Department
2 established 5 percent (of the total premium) as the level of profit to which title
3 insurers are entitled. The Insurance Department is supposed to carefully analyze
4 TIRSA's rate calculations, and, in particular, its revenue and cost information, to
5 ensure that this 5 percent profit level is maintained and based on a reasonable
6 premium. However, without the authority or ability to scrutinize agency commission
7 costs, the Insurance Department has been unable to perform this function. As a
8 result, defendants (through TIRSA) have been able to set artificially high title
9 premiums and secure title profits far in excess of the 5 percent threshold.
10
11

12 81. Through an independent investigation conducted over the past several
13 years, the New York State Attorney General found that for every dollar of insurance
14 premium defendants collected, of the roughly 15 cents that supposedly accounts for
15 the risk of loss, only 3 cents is paid out in claims. And, of the roughly 85 cents that
16 supposedly covers agency commissions, only between 8 and 11 cents goes to costs
17 actually incurred by title agents in producing the title policy. These numbers show
18 that title insurers' collectively fixed rates have resulted in profits that untethered to
19 and vastly exceed the costs of producing such policies.
20
21

22 82. The New York Attorney General's investigation further revealed that
23 what was largely driving these numbers were the kickbacks and other financial
24 inducements defendants were funneling to and through title agents to secure more
25 business. As reported at the New York Insurance Department's 2006 hearing, one
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1 title agency's financial statements revealed that it spent more than \$1 million of these
2 so-called "agency commissions" on items identified as "Christmas", "automobile
3 expenses", "political contributions", "promotional expenses", and "travel and
4 entertainment". These expenses are not even remotely related to the issuance of title
5 insurance.

6
7 83. A report to the California Insurance Comissioner prepared by Barry
8 Birnbaum, Consulting Economist, in December 2005, found strikingly similar
9 abuses, "We found numerous examples in California of illegal rebates and kickbacks
10 where the title insurer or the underwritten title company provides money, free
11 services or other things of value to a real estate agent, a lender or homebuilder in
12 exchange for business referrals." (*An Analysis of Competition in the California Title*
13 *Insurance and Escrow Industry*, December 2005, p. 3)

14
15 84. All of this "excess money" paid to title agents not only works to steer
16 business to defendants. It also serves to boost defendants' own profits through the
17 inflated revenues they obtain to cover these agency payments and through their
18 ownership or management stake in many of these agencies.

19
20 85. Defendants are competitors in the sale of title insurance to consumers
21 throughout the United States. These title insurers have agreed and engaged in
22 concerted efforts to (i) collectively set and charge uniform and supracompetitive
23 rates for title insurance, (ii) include in their calculated rates agency commission
24 costs, (iii) embed within these costs payoffs, kickbacks, and other charges that are
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1 unrelated to the issuance of title insurance, and (iv) hide these supposed "costs" from
2 regulatory scrutiny by funneling them to and through title agents over which the
3 government agencies have no ability or authority to regulate.

5 86. The GAO in its 2007 report entitled "Actions Needed to Improve
6 Oversight of the Title Insurance Industry and Better Protect Consumers" found
7 several indicia of a lack of competition and questions about the reasonableness of
8 prices including:

- 10 • Consumers find it difficult to shop for title
11 insurance, therefore, they put little pressure on
12 insurers and agents to compete based on price;
- 14 • Title agents do not market to consumers, who pay
15 for title insurance, but to those in the position to
16 refer consumers to particular title agents, thus
17 creating potential conflicts of interest;
- 19 • A number of recent investigations by HUD and state
20 regulatory officials have identified instances of
21 alleged illegal activities with the title industry that
22 appear to reduce price competition and could
23 indicate excessive prices;

- As property values or loan amounts increase, prices paid for title insurance by consumers appear to increase faster than insurers' and agents' costs; and
 - In states where agents' search and examination services are not included in the premium paid by consumers, it is not clear that additional amounts paid to title agents are fully supported by underlying costs.

87. The GAO visited several states, including California, and found a lack of regulatory oversight:

In the states we visited, we found that regulators did not assess title agents' costs to determine whether they were in line with premium rates; had made only limited efforts to oversee title agents (including ABAs involving insurers and agents); and, until recently, had taken few actions against alleged violations of antikickback laws. In part, this situation has resulted from a lack of resources and limited coordination among different regulators within states. On the federal level, authority for alleged violations of section 8 of RESPA, including those involving increasingly complex ABAs, is limited to seeking injunctive relief. Some state regulators expressed frustration with HUD's level of responsiveness to their requests for help with enforcement, and some industry officials said that RESPA rules regarding ABAs and referral fees need to be clarified. Industry and government stakeholders have proposed several regulatory changes, including RESPA reform, strengthened regulation of agents, a competitor right of action with no monetary

penalty, and alternative title insurance models. [Id. at 41, footnotes omitted.]

E. Competition Based on Kickbacks and Inducements But Not Rates

88. Having agreed to fix or stabilize prices in New York and other states where they overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

89. In other words, as a direct result of these meetings where rates were agreed to, these same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well. To compete on rates in other states could and would imperil their ability to maintain the agreed rate in states like New York.

90. As is the case in New York, a lack of regulatory authority over rates created an environment in which a conspiracy can and did succeed. No agency was examining why all the rates were virtually identical, and no agency was examining whether the costs associated with these premiums were reasonable. This is an environment which is conducive to price fixing.

91. In California, there is a lack of regulatory authority and oversight over title insurance companies. The rates in California are not set as part of a deliberate state intervention and the state does not and cannot meaningfully renew or approve these rates. The rates at issue in this case went into effect without review.

92. In fact, in February of 2007, the Insurance Commissioner of California, Steve Poizner issued a statement concluding "that reasonable price competition does

1 not exist for title and escrow services.” (*Insurance Commissioner Steve Poizner
2 Issues Statement Following Decision by OAL on New Regulations*, California
3 Department of Insurance, February 22, 2007)

4

5 **F. Other Indicators of a Lack of Competition and Conditions Conducive to
6 Collusive Rate Setting**

7

8 93. In addition to the uniformity of rates, other facts suggest that it is more
9 plausible than not that rates have been set based on an agreement to fix prices.
10

11 94. In theory, the chain of title should be documented back to its historic
12 grant of ownership centuries in the past. Fear about a possible title defect in the
13 distant past is widely used as a justification by title agencies when convincing
14 property buyers to purchase an owner policy in addition to the lender policy, which
15 is mandatory to secure a mortgage. The title agency, however, saves much time and
16 money when the search is limited to one or two transactions. They rely on the
17 insurance policy to cover the remote chance of missing an earlier but still-valid
18 claim. If such a claim is asserted and survives the scrutiny of the title insurance
19 company’s legal department, the expected cost of compensation is likely to be less
20 than the sum of added overhead costs of routinely tracing back every chain of title to
21 the earliest registered owner in the distant past.

22 95. Title insurance industry officials tend to justify the large proportion of
23 the premium retained by the title abstract and settlement agency (from 60 to more
24

1 than 90 percent) by the alleged high cost of title searching back into the distant past.
2 In fact, a high proportion of noncommercial properties are searched only through the
3 most recent transaction. No information is available as to what proportion of claims
4 originate in the distant past. The industry has never published pertinent statistics. It
5 would have a marketing incentive to publish these statistics if the risk were
6 significant; that it has not published these statistics indicates that the risk probably is
7 only slightly greater than zero.

8 96. Many U.S. homes are being resold three or four times in twenty-five
9 years. At each of these occasions, an abstract of title will be prepared on the basis of
10 a more or less thorough review of the available title records, inheritance records,
11 family records and records of past or current liens against a property. It is
12 reasonable, therefore, to suspect that the risk of a title defect will decrease every time
13 a property is sold.

14 97. Title searches have become less labor intensive, especially in large
15 urban counties and cities. More and more of the information is available online. The
16 statistical likelihood that a title default would be overlooked is a closely held
17 industry secret, but it appears to be so small that many transactions are now insured
18 on the basis of a search of the last owner's title history or a search into transactions
19 that occurred during the last twenty-five to thirty-five years. The evidence is strong
20 that the title insurance industry has achieved a remarkably high level of loss
21 minimization. Indeed, the national average recovery for a claim on a title insurance
22

1 policy is approximately 5% of the total premium. On the other hand, the national
2 average for property insurance is approximately 80% of the total premium collected.
3

4 98. Thus the costs of production have decreased as has the risk of loss yet
5 none of these factors has resulted in price competition at the consumer level.
6

7 99. There is a remarkable absence of rate changes by title insurers over the
8 past five years, despite declining costs of production, increased number of
9 transactions and increased revenue per transaction. During a period when costs per
10 unit of production declined significantly, underwritten title companies and title
11 insurers maintained excessive rates. The prices charged by title insurers and
12 underwritten title companies were not and are not responsive to the changing costs of
13 production or increasing revenue per transaction at a given set of rates. Again, this is
14 indicia of an agreement not to compete based on price.
15

16 100. As noted, the title companies engage in illegal rebates and kickbacks
17 where the title insurer or the underwritten title company provides money, free
18 services or other things of value to a real estate agent, a lender or homebuilder in
19 exchange for business referrals. These illegal rebates and kickbacks – a consequence
20 of reverse competition – show that title insurance rates are supra competitive and that
21 some portion of the overcharge is passed from the underwritten title company or title
22 insurer to the referrer of business.
23

24 101. A lack of competition and the ability to control prices is enhanced by
25 the fact that there were few title insurer entrants over the period from 1995 through
26
27

1 2005 and the number of title insurer groups declined as title insurers acquired other
2 title insurers. There were few underwritten title company entrants over the 2000 to
3 2005 period and new entrants were controlled business arrangements whose addition
4 to the market did not result in greater price competition.

6 102. Access to title plants can be a barrier to entry, but a large barrier to entry
7 exists due to the established relationships between the entities that can steer the
8 consumer's title and escrow business and the entities who sell title insurance and
9 escrow services.

12 103. The title insurance market is highly concentrated – a few title insurers
13 account for the vast majority of title insurance sales – at both the statewide level and
14 at the county level in California. For example, three title insurer groups account for
15 77.4% of the market at a statewide level. At the county level, each individual market
16 was highly concentrated. The GAO found that First American and Fidelity had a
17 market share of 66 percent. Such a concentration enhances the ability of companies
18 to fix prices

21 104. The agreement not to compete based on price is also evidenced by the
22 fact that no company has marketed its services to consumers, the ultimate purchasers
23 of the product. This is in marked contrast to real insurance, for example, car
24 insurance, where the companies compete vigorously with well recognized slogans
25 such as State Farm's "Like a Good Neighbor," or Allstate's "good hands," or the
26 cute (to some) GEICO gecko promising low prices.

1 105. As a result of this lack of competition, California title insurance and
2 escrow services markets have enjoyed excessive profits, "In a competitive market,
3 sellers earn a reasonable profit. In the California title insurance and escrow
4 services markets, bot the title insurers and the underwritten title companies realized
5 excessive profits over an extended period of time. In 2003 and 2004, underwritten
6 title companies in California earned after-tax profits of 49.0% and 32.3%
7 respectively – excessive by any reasonable measure." (*An Analysis of Competition in*
8 *the California Title Insurance and Escrow Industry*, December 2005, p. 2)

9
10 **VIII. CLAIMS FOR RELIEF**
11

12 **COUNT I**
13

14 **Violation of the Sherman Act**
15

16 106. Plaintiff incorporates by reference the preceding allegations.
17

18 107. Beginning at least as early as May 2004, and continuing thereafter to the
19 present, the exact dates being unknown to plaintiff, defendants and their co-
20 conspirators engaged in a combination and conspiracy in unreasonable restraint of
21 the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman
22 Act.
23

24 108. The aforesaid combination and conspiracy has consisted of a continuing
25 agreement, understanding and concert of action among the defendants and their co-
26 conspirators, the substantial terms of which have been:
27
28

1 (a) to fix, raise, maintain and stabilize the price of title insurance
2 throughout California;

3 (b) to fix, raise, maintain and stabilize the terms and conditions of
4 sale of title insurance in California; and

5 (c) to allocate and divide the market for title insurance in California.

6 109. In the absence of proper regulatory authority and oversight, defendants'
7 conduct constitutes a horizontal agreement to fix the form, structure, and prices of
8 title insurance and to allocate and divide the title insurance market in California and
9 is a *per se* violation of Section I of the Sherman Act.

10 110. Defendants' price-fixing, market allocation and division activity has
11 been continuous throughout the relevant damages period and has been renewed and
12 reinforced annually through submissions to the OIC of supposed cost and revenue
13 information and its periodic submissions of rate changes.

14 111. Through their collective price-fixing, market allocation and division and
15 manipulation of the regulatory process, defendants have harmed competition by
16 charging consumers supra competitive prices for title insurance in California,
17 evidenced in part by the fact that the prices are uniformly higher than compared with
18 the cost of providing the insurance.

19 112. The aforesaid combination and conspiracy has had the following effects
20 among others:

1 (a) price competition in the sale of title insurance has been
2 suppressed, restrained and eliminated;

3 (b) prices for title insurance have been raised, fixed, maintained and
4 stabilized at artificially high and non-competitive levels; and

5 (c) purchasers of title insurance have been deprived of the benefit of
6 free and open competition.

7 113. During the period of the antitrust violations by defendants and their co-
8 conspirators, plaintiff and each member of the Class she represents, has purchased
9 title insurance and, by reason of the antitrust violations herein alleged, paid more for
10 such that it would have paid in the absence of said antitrust violations. As a result,
11 plaintiff and each member of the Class she represents, has been injured and damaged
12 in an amount presently undetermined.

13 **COUNT II**

14 **Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.***

15 114. Plaintiff incorporates by reference the preceding allegations.

16 115. Defendants conduct as set forth above is in violation of the Cartwright
17 Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

18 116. As a direct result of defendants' unlawful acts plaintiffs have paid
19 artificially inflated prices for title insurance and have suffered injury to their business
20 and property.

COUNT III

(California's Business & Professions Code §§ 17200, *et seq.*)

117. The preceding paragraphs of this Complaint are realleged and
incorporated by reference. Plaintiff asserts this claim for violations of California's
UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of herself and the members of
the Class.

118. Defendants' statements and representations constitute unfair, unlawful
and deceptive trade practices in violation of the UCL.

119. All of the wrongful conduct alleged herein occurs and continues to
occur in the conduct of defendants' business. Defendants' wrongful conduct is part
of a pattern or generalized course of conduct that is repeated in the State of
California on hundreds, if not thousands, of occasions daily.

120. Plaintiff has suffered injury in fact and has lost money or property as a
result of defendants' unfair, unlawful and/or deceptive practices by paying a higher
price for title insurance than she would or should have absent the conduct
complained of.

121. Plaintiff requests that this Court enter such orders or judgment as may
be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or
deceptive practices, to restore to any person in interest any money which may have
been acquired by means of such unfair competition and to disgorge any profits

1 realized by defendants as a result of its unfair, unlawful and/or deceptive practices,
2 as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for
3 such other relief as set forth in the Prayer for Relief.
4

5 **COUNT IV**

6 **UNJUST ENRICHMENT**

8 122. Plaintiff incorporates by reference the preceding allegations.

9 123. This Cause of Action is pled in the alternative to all claims and/or
10 causes of action at law.

12 124. Defendant has received a benefit from plaintiff and the Class members
13 in the form of the prices plaintiff and the Class members paid for defendants' title
14 insurance.

16 125. Defendants are aware of their receipt of the above-described benefit.

17 126. Defendants received the above-described benefit to the detriment of
18 plaintiff and each of the other members of the Class.

20 127. Defendants continue to retain the above-described benefit to the
21 detriment of plaintiff and the Class members.

23 128. As a result of defendants' unjust enrichment, plaintiff and the Class
24 members have sustained damages in an amount to be determined at trial and seek full
25 disgorgement and restitution of defendants' enrichment, benefits, and ill-gotten gains
26 acquired as a result of the unlawful or wrongful conduct alleged above.
27

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands:

A. That the alleged combination and conspiracy among the defendants and their co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

B. That the Court declare that the premiums charged are excessive under state law and order damages;

C. That judgment be entered against defendants, jointly and severally, and in favor of plaintiff, and each member of the Class it represents, for threefold the damages determined to have been sustained by plaintiff, and each member of the Class it represents, together with the cost of suit, including a reasonable attorneys' fee;

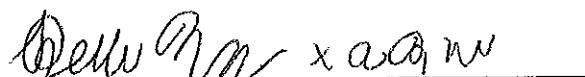
D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding or concert of action, adopting or following any practice, plan, program, or design having a similar purpose or effect in restraining competition; and

1 E. Such other and further relief as may appear necessary and appropriate.
2
3

4 **JURY TRIAL DEMANDED**
5
6

7 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims
8 alleged herein.
9
10

11 DATED: June 3, 2008

12 
13 Brian Barry
14 LAW OFFICES OF BRIAN BARRY
15 1801 Avenue of the Stars, Suite 307
16 Los Angeles, California 90067
17 Telephone: (310) 788-0831
18 Facsimile: (310) 788-0841
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19 *Attorneys for Plaintiff*
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Alicemarie H. Stotler and the assigned discovery Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

SACV08- 620 AHS (ANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

<p>Mark Moynahan, on behalf of himself and all others similarly situated,</p> <p style="text-align: right;">PLAINTIFF(S)</p> <p>v.</p> <p>FIDELITY NATIONAL FINANCIAL, INC., et. al. (see attachment)</p>	<p>CASE NUMBER</p> <p>SACV08-0620 AHS (AMx)</p> <hr/> <p style="text-align: center;">SUMMONS</p> <p>DEFENDANT(S).</p>
---	--

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Brian Barry, whose address is 1801 Avenue of the Stars, Suite 307. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: JUN - 4 2008

By: Natalie Honeycutt
Deputy Clerk

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

1 Brian Barry (135631: bribarry1@yahoo.com)
2 LAW OFFICES OF BRIAN BARRY
3 1801 Avenue of the Stars, Suite 307
4 Los Angeles, California 90067
Telephone: (310) 788-0831
Facsimile: (310) 788-0841

5 *Attorneys for Plaintiff*

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

8 Mark Moynahan, on behalf of himself and all
9 others similarly situated,

} Case No.

10 Plaintiff,

11 v.

12 FIDELITY NATIONAL FINANCIAL, INC.,
FIDELITY NATIONAL TITLE
13 INSURANCE COMPANY, TICOR TITLE
INSURANCE COMPANY, TICOR TITLE
14 INSURANCE COMPANY OF FLORIDA,
CHICAGO TITLE INSURANCE
COMPANY, NATIONAL TITLE
15 INSURANCE OF NEW YORK, INC.,
SECURITY UNION TITLE INSURANCE
COMPANY, THE FIRST AMERICAN
CORPORATION, FIRST AMERICAN
16 TITLE INSURANCE COMPANY, UNITED
GENERAL TITLE INSURANCE
COMPANY, LANDAMERICA FINANCIAL
17 GROUP, INC., COMMONWEALTH LAND
TITLE INSURANCE COMPANY,
LAWYERS TITLE INSURANCE
CORPORATION, TRANSNATION TITLE
18 INSURANCE COMPANY, STEWART
TITLE GUARANTY COMPANY and
19 STEWART TITLE INSURANCE
COMPANY

} CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

20 Defendants.
21
22
23
24

25
26
27
28 **COPY**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Mark Moynahan, on behalf of himself and all others similarly situated,

PLAINTIFF(S)

v.
FIDELITY NATIONAL FINANCIAL, INC., et. al.
(see attachment)

DEFENDANT(S).

CASE NUMBER

SACV08-0620 AHS (ANx)

SUMMONS

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A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Brian Barry, whose address is 1801 Avenue of the Stars, Suite 307. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

JUN - 4 2008

Dated: _____

By: NATALIE LONGORIA



1198

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

Brian Barry (135631: bribarry1@yahoo.com)
LAW OFFICES OF BRIAN BARRY
1801 Avenue of the Stars, Suite 307
Los Angeles, California 90067
Telephone: (310) 788-0831
Facsimile: (310) 788-0841

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Mark Moynahan, on behalf of himself and all others similarly situated,

Case No.

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL, INC.,
FIDELITY NATIONAL TITLE
INSURANCE COMPANY, TICOR TITLE
INSURANCE COMPANY, TICOR TITLE
INSURANCE COMPANY OF FLORIDA,
CHICAGO TITLE INSURANCE
COMPANY, NATIONAL TITLE
INSURANCE OF NEW YORK, INC.,
SECURITY UNION TITLE INSURANCE
COMPANY, THE FIRST AMERICAN
CORPORATION, FIRST AMERICAN
TITLE INSURANCE COMPANY, UNITED
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COMPANY, LANDAMERICA FINANCIAL
GROUP, INC., COMMONWEALTH LAND
TITLE INSURANCE COMPANY,
LAWYERS TITLE INSURANCE
CORPORATION, TRANSNATION TITLE
INSURANCE COMPANY, STEWART
TITLE GUARANTY COMPANY and
STEWART TITLE INSURANCE
COMPANY

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Defendants.

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Mark Moynahan		DEFENDANTS Fidelity National Financial, Inc., et. al.			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Law Offices of Brian Barry 1801 Avenue of the Stars, Suite 307, Los Angeles, CA 90067 Phone: (310) 788-0831		Attorneys (If Known)			
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4		
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5		
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6		
IV. ORIGIN (Place an X in one box only.)					
<input checked="" type="checkbox"/> 1 Original <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge					
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)					
CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$			
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Sherman Act request for antitrust injunctive relief					
VII. NATURE OF SUIT (Place an X in one box only.)					
<input type="checkbox"/> OTHER STATUTES <input checked="" type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> TORTS <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> TORTS <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage <input type="checkbox"/> 390 Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act

FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

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